

IN MATTER OF ARTICLE 146 OF THE CONSTITUTION

COSTAS ALKIDAS,

Applicant,

and

COSTAS ALKIDAS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION
AND ANOTHER)

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION AND ANOTHER

Respondents.

(Case No. 215/65).

Public Officers — CYTA posts — Retirements — Decision of the Public Service Commission, the appropriate organ under Article 122 and 125.1 of the Constitution, to retire Applicant from service on his attaining the age of fifty-five years—Said Commission has acted quite properly in so retiring Applicant—Matter decided in accordance with the special terms of Applicant's service—Which terms have not been altered as a result of the fact that he had come, in relation to retirement, under the competence of the Public Service Commission by virtue of Article 122 and 125 of the Constitution, supra—See, also, under the following headings.

Public Service Commission — Retirements of public officers—Competence under Articles 122 and 125.1 of the Constitution—As the time of the retirement of the Applicant was not prescribed directly by express legislative provision, so that it could be implemented automatically by means of administrative action in accordance with such provision—It was a matter which had to be dealt with by the Public Service Commission under Article 125.1 of the Constitution (see Rouhi and The Republic, 2 R.S.C.C.84)—See, also, under Public Officers, above; and under the following headings.

Public Service Commission—Constitution and Quorum—Defective constitution or quorum of the Commission — Such defects concerning decisions taken between the 21st December, 1963 and the 16th December, 1965, have been cured by section 5 of the Public Service Commission (Temporary Provisions) Law, 1965

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(Law No. 72, enacted on the 16th December, 1965)—Effect of this Law on pending recourses under Article 146 of the Constitution—Provided the recourse was filed and the relevant objection taken before the enactment on the 16th December, 1965, of the said Law No. 72 of 1965—The sub judge decision would not be covered by that Law—But in the present instance the recourse fails on the issue of defective Constitution or quorum of the Public Service Commission—Because the relative objection to such defects was not raised until a notice of supplementary legal issues was filed on the 23rd April, 1966—Notwithstanding that the recourse had been filed on the 10th November, 1965.

Administrative Law—Administrative decisions—Communication—Proper communication of administrative decisions—Principles—In the present instance the decision of the Public Service Commission to retire Applicant was held to have been properly communicated to him.

Administrative and Constitutional Law — Unequal treatment — The principle of equality—Equality of treatment can only be invoked where there exists equality in the inherent nature of things.

Constitutional Law—Recourse under Article 146 of the Constitution—Effect on pending recourses of legislation curing retrospectively defects in administrative decisions—See under Public Service Commission—Constitution and Quorum, above.

Retrospective legislation—Curing defects in administrative decisions—Effect—See above.

Statutes—Retrospective effect—See above.

Equality—Principle of equality can only be called for where there exists equality in the inherent nature of things—See, also, under Administrative and Constitutional Law, above.

Unequal treatment—See under Equality, above.

Recourse under Article 146 of the Constitution—Effect thereon of retrospective legislation—See under Public Service Commission—Constitution and Quorum, above.

Administrative decision—Communication of—See above.

Communication—Communication of administrative decisions—See above.

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In this recourse under Article 146 of the Constitution the Applicant complains against the decision dated the 23rd September, 1965, of Respondent 1, the Public Service Commission, to retire him from the service of Respondent 2, the Cyprus Inland Telecommunications Authority (hereinafter referred to as CYTA) as from the 6th November, 1965, when he attained the age of fifty-five years. This decision of Respondent 1 was communicated to the Applicant on the 23rd October, 1965, through CYTA, Respondent 2.

The Applicant entered in 1926 the service of the Eastern Telegraph Company; later, in 1929, when the said Company amalgamated with Cable and Wireless Ltd., the Applicant became an employee of the latter concern. All along the Applicant was a member of the Eastern Pension Fund (*exhibit 9* in this case) and his retiring age thereunder was and continued to be his fifty-fifth year. In July, 1956, CYTA took over from Cable and Wireless Ltd. Since then the Applicant became an employee of CYTA in accordance with the provisions of section 28 (1) of the Inland Telecommunications Service Law, Cap. 302 (which section is set out in the judgment, *post*). It is to be noted that by virtue of the above section 28(1), Applicant's service with CYTA continued to be governed by the same conditions—as near as might be—as those on which he was employed by Cable and Wireless Ltd.

On the 23rd September, 1965, the Respondent 1 Public Service Commission, as the appropriate organ under Articles 122 and 125.1 in the matter, decided to retire Applicant on the 6th November, 1965, on his attaining the age of fifty-five years, because it came to the conclusion that he continued to be a member of the aforesaid Eastern Pension Fund and that his retirement continued to be governed by the provisions of such Fund, which provided for retirement at the age of fifty-five. On the 27th September, 1965, the Commission, Respondent 1, wrote a letter to CYTA communicating its said decision and asking it that it should be conveyed to Applicant, which CYTA did by letter to the Applicant dated the 23rd October, 1965, with copy of the Commission's said letter attached.

The recourse was filed on the 10th November, 1965. The Applicant did not raise by his application in this recourse any objection to the validity of the *sub judice* decision on the ground of the defective constitution or quorum of the said Commission,

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Respondent 1, at the material time. He did so, however, by means of a notice of additional legal issues, filed on the 23rd April, 1966, (relying in this respect on *Georghiades and The Republic* (1966) 3 C.L.R. 252), *i.e.* after the enactment on the 16th of December, 1965, of the Public Service Commission (Temporary Provisions) Law, 1965 (Law No. 72 of 1965), which law by section 5 validates decisions of the Public Service Commission taken between the 21st December, 1963 and the 16th December, 1965, curing any relative defect in the constitution or the quorum of the said Commission at the time. It has, further, been contended by the Applicant that the *sub judice* decision must be annulled on any of the following grounds: (1) The said decision to retire him has never been properly communicated to him, so as to become effective; (2) the Commission acted on a misconception *i.e.* that the retirement of Applicant from the service was an imperative course, automatically to be adopted at the beckoning of CYTA; (3) he has been given unequal treatment, in that the retirement age of other CYTA employees is the age of sixty years.

In dismissing the recourse on all grounds, the Court:

Held, (1). For the reasons given in the judgment in the case of *Theophylactou and The Republic*, (1966) 3 C.L.R. 801, and which reasons do not have to be repeated herein again, I take the view that the Applicant cannot succeed in this recourse on the ground of the defective constitution or quorum of the Public Service Commission, Respondent 1, at the time when the *sub judice* decision was reached. The present case is distinguishable from the case *Georghiades and The Republic* (*supra*), because in the latter case the objection was raised before the enactment on the 16th December, 1965, of the aforesaid Law No. 72 of 1965, *supra*, whereas in the present instance, though the application was filed prior to the 16th December, 1965, *i.e.* on the 10th November, 1965, the objection, however, to the validity of the decision complained of, on the ground of defective constitution or quorum of the Commission, was not raised until the notice of additional legal issues which was filed as late as the 23rd April, 1966.

(2) In the light of what has been stated on the subject of the proper communication of administrative decisions in *Jordanou* (No. 1) and *The Republic* (1966) 3 C.L.R. 308, and *Artemiou* (No. 1) and *The Republic* (1966) 3 C.L.R. 436, and bearing in mind that the

letter of the Commission to CYTA dated the 27th September, 1965, communicating the *sub judice* decision, was clearly intended by the Commission to be brought to the knowledge of the Applicant (*supra*) and that this has, in fact, been done by means of the letter of the 23rd October, 1965, addressed to the Applicant by CYTA (*supra*), with copy of the aforesaid letter of the Commission attached, I am of the opinion that there has been due communication of the *sub judice* decision of the Commission to the Applicant.

(3) (a) It was further argued that as the matter was presented by CYTA to the Commission, it was made to appear that it was imperative for the Commission to retire the Applicant at the age of fifty-five years, and thus the Commission acted under the misconception that it was not open lawfully to it to decide to retire Applicant at the age of sixty years as he had applied for.

(b) As the time of the Applicant's retirement was not prescribed directly by express legislative provision, so that it could be implemented automatically by means of administrative action to be taken in accordance with such provision, it was a matter which had to be dealt with by the Public Service Commission in the exercise of its competence under Articles 122 and 125.1 of the Constitution (see *Rouhi and The Republic*, 2 R.S.C.C. 84, and *Papassavas and The Republic* (reported in this Part at p. 111 *ante*)); the Commission was called upon by CYTA to decide, in the light of the terms and conditions of service applicable to Applicant, at what age he was to be retired.

(c) I am of the opinion, on the basis of the totality of the material before me, that the Commission has not treated the retirement of the Applicant as an imperative course, automatically to be adopted at the beckoning of the CYTA, but it went into the matter duly.

(d) The Applicant was an officer, whose retirement was, indeed, governed, because of the history of his employment, by special provisions, namely, those of the Eastern Pension Fund (*supra*) as rightly found by the Commission. The fact that he had come, in relation to his retirement, under the competence of the Commission by virtue of Articles 122 and 125 of the Constitution, did not entail also the alteration of the provisions regarding his tenure of office (see *Rossides and The Republic*, 3 R.S.C.C. 95).

(e) In the circumstances, I am of the opinion that the Commission has acted quite properly in retiring the Applicant as it did. It decided the matter in accordance with the terms of the Applicant's service and no extension of such service could be properly granted, after the prescribed retirement age, once no recommendation for such an extension, in the exigencies of the service, had been made by CYTA.

(4) Regarding the complaint that by being retired at the age of fifty-five, the Applicant has been given unequal treatment inasmuch as the retirement age for other employees of CYTA is the age of sixty years, suffice it to say that as it has been repeatedly stressed (see, *inter alia*, *Mikrommatis and The Republic*, 2 R.S.C.C. 125), equality of treatment can only be called for where there exists equality in the inherent nature of things; and, in my opinion, this was not so in the case of Applicant *vis-a-vis* other employees of CYTA, who were not members of the said Eastern Pension Fund but who were subject to other arrangements providing for retirement at the age of sixty years.

(5) For all the above reasons, this recourse fails and is hereby dismissed. There will be no order as to cost against Applicant, because the matter of his retirement gave rise to certain issues which he was entitled to bring to this Court for determination, in view of their particular nature.

Application dismissed.
No order as to costs.

Cases referred to:

Georghiades and The Republic (1966) 3 C.L.R. 252, *distinguished*;
Theophylactou and The Republic (1966) 3 C.L.R. 801;
Iordanou (No. 1) and The Republic (1966) 3 C.L.R. 308;
Artemiou (No. 1) and The Republic (1966) 3 C.L.R. 436;
Rouhi and The Republic, 2 R.S.C.C. 84;
Papassavas and The Republic (reported in this Part at p.111 *ante*);
Mikrommatis and The Republic, 2 R.S.C.C. 125.

Recourse.

Recourse against the decision to retire Applicant from the service of Respondent 2 on attaining the age of fifty-five years.

A. *Triantafyllides* for the Applicant.

L. *Loucaides*, counsel of the Republic, for Respondent 1.

A. *HadjiIoannou*, for Respondent 2.

Cur. adv. vult.

The following Judgment was delivered by:

TRIANTAFYLLIDES, J.: In this recourse the Applicant complains against the decision to retire him from the service of Respondent 2, the Cyprus Telecommunications Authority (hereinafter to be referred to as CYTA) as from the 6th November 1965, when he attained the age of fifty-five years.

The relevant events are shortly as follows:

The Applicant entered in 1926 the service of the Eastern Telegraph Company; later, in 1929, when the said Company amalgamated with Cable and Wireless Ltd., he became an employee of the latter concern. All along the Applicant was a member of the Eastern Pension Fund (see *exhibit* 9) and his retiring age was his fifty-fifth year.

Then in July, 1956, CYTA took over from Cable and Wireless Ltd. Since then the Applicant became an employee of CYTA, in accordance with the provisions of section 28 (1) of the Inland Telecommunications Service Law, (Cap. 302) which reads as follows:

“28. (1) Every officer employed on the staff of the company in Cyprus on a day to be fixed by a notice of the Governor to be published in the *Gazette* (in this section referred to as the ‘fixed day’), who shall have given notice in writing within twenty-one days of the publication in the *Gazette* of the notice of the fixed day of his intention to be transferred to the Authority and who, in the opinion of the Governor, was mainly or wholly employed for the company’s undertaking, shall be deemed to be an officer of the Authority at the same rate of pay, and, as near as may be, on the same conditions, as those on which he was employed by the company, with effect from the fixed day”.

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It is to be noted that, by virtue of the above section 28 (1), the Applicant's service with CYTA continued to be governed by the same conditions — as near as might be — as those on which he was employed by Cable and Wireless Ltd.

On the 15th January, 1959, the Applicant applied to become a member of Respondent's 2 Pension Fund (see *exhibit 2*).

He was informed on the 22nd January, 1959, (see *exhibit 3*) that the Fund had not yet been established and that his application would be given due consideration when the Fund would come into force.

Actually — as it has transpired during the hearing of this Case — the said Fund has not yet been established; as it appears from the relevant records (see *exhibit 12*) the Fund's Rules are still under consideration.

A few months before the Applicant was due to become fifty-five years old, on the 20th April, 1965, the matter of his retirement was referred to by the Board of CYTA in relation to an application of his for an increase of his emoluments (see minutes *exhibit 14*). On that occasion it was taken for granted by the said Board that Applicant would retire at the age of fifty-five, in accordance with the provisions of the Eastern Pension Fund.

On the 5th May, 1965 the Secretary of CYTA addressed to Applicant a letter informing him that, in accordance with the provisions of the Eastern Pension Fund, he was due to retire on completion of his fifty-fifth year, *i.e.* on the 6th November, 1965 (see *exhibit 5*).

As a result the Applicant filed a recourse, 98/65, against the decision to retire him.

On the 27th May, 1965, the Board of CYTA dealt, once again, with the case of the Applicant, who had sought an interview with the Chairman of CYTA and had put forward two claims: (i) for an increase of his salary scale and (ii) for extension of his service until the age of sixty. The Chairman informed the Board that he had explained to the Applicant that under the Eastern Pension Fund he was due to retire on attaining the age of fifty-five years and that no exception could be made in his case; and that he had asked Applicant to supply a copy of his above-mentioned recourse. The

Board took the view that as the Applicant had already taken proceedings in Court it was not proper to take any position in the matter which might affect the outcome before the Court (see minutes *exhibit 13*).

On the 15th September, 1965, CYTA referred to Respondent 1, the Public Service Commission, the matter of the retirement of the Applicant (see documents *exhibit 6 (a) to exhibit 6 (d)*). It appears that such course was adopted because by his aforesaid recourse the Applicant had contended that it was the Commission, and not CYTA, which was the organ to decide on his retirement (see letter *exhibit 6 (a)*).

On the 20th September, 1965, the Commission dealt with the matter (see its minutes *exhibit 7 (a)*) and it was decided to consider it on the 23rd September, 1965, in the presence of the Secretary of CYTA and of CYTA's legal adviser.

On the 23rd September, 1965, the Commission decided (see its minutes *exhibit 7*), to retire the Applicant on the 6th November, 1965, on his attaining the age of fifty-five years, because it came to the conclusion that he had continued to be a member of the Eastern Pension Fund and that his retirement continued to be governed by the provisions of such Fund, which provided for retirement at the age of fifty-five years.

On the 27th September, 1965, the Commission wrote a letter to CYTA (see *exhibit 1 (b)*) communicating its decision in relation to the retirement of the Applicant and asking that it should be conveyed to Applicant accordingly.

On the 23rd October, 1965, CYTA informed the Applicant by letter (see *exhibit 1 (a)*) that he would be retiring on the 6th November, 1965; copy of the aforesaid letter of the Commission, dated the 27th September, 1965, was attached to the letter of CYTA to the Applicant.

This recourse was filed on the 10th November, 1965.

The Applicant did not raise by the Application in this recourse any objection to the validity of the *sub judice* decision on the ground of the defective constitution or quorum of the Commission at the material time. He did so, however, by means of a notice of additional legal issues, which was filed on the 23rd April, 1966; he relied in this respect on *Georgiades and the Republic* (1966) 3 C.L.R. 252.

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In the *Georgiades* case such an objection was taken before the enactment, on the 16th December, 1965, of the Public Service Commission (Temporary Provisions) Law 1965 (Law 72/65) and, particularly, of section 5 thereof – validating decisions of the Commission taken between the 21st December, 1963 and the 16th December, 1965 – whereas in the present Case this objection has been taken after such enactment; for the reasons given in the judgment in the case of *Theophylactou and The Republic* (1966) 3 C.L.R. 801 and which reasons do not have to be repeated herein again, I take the view that the Applicant is not entitled to succeed in this recourse on the ground of the defective constitution or quorum of the Commission at the time when the *sub judice* decision was reached.

It has, further, been contended by the Applicant in this Case that the decision of the Commission to retire him has never been properly communicated to him, so as to take effect. In the light of what has been stated, already, on the subject of the communication of administrative decisions, in *Iordanou (No. 1) and The Republic* (1966) 3 C.L.R. 308 and *Artemiou (No. 1) and The Republic* (1966) 3 C.L.R. 436 and bearing in mind that the letter of the Commission to CYTA, dated the 27th September, 1965 (*exhibit 1 (b)*), communicating the *sub judice* decision, was clearly intended by the Commission to be brought to the knowledge of the Applicant, and that this has, in fact, been done by means of the letter of the 23rd October, 1965, addressed to the Applicant by CYTA, with copy of the aforesaid letter of the Commission attached, I am of the opinion that there has been due communication of the *sub judice* decision of the Commission to the Applicant.

In attacking the validity of the decision to retire him the Applicant has argued that, as the matter was presented by CYTA to the Commission, it was made to appear that it was imperative for the Commission to retire the Applicant at the age of fifty-five years, and thus the Commission acted under the misconception that it was not lawfully open to it to decide to retire the Applicant at the age of sixty years; so no due consideration was given to the possibility of retiring the Applicant at the latter age instead of at the former.

It is clear from the relevant letter of CYTA to the Commission, dated the 15th September, 1965 (see *exhibit 6 (a)*), by means of which the matter of the retirement of the Applicant was placed

before the Commission, that the Commission was duly informed of Applicant's contention that he should be retired at the age of sixty years. Also, by means of a statement (see *exhibit 6 (b)*), accompanying such letter and setting out relevant considerations pertaining to the question of the retirement of Applicant, such question was presented to the Commission in its proper context.

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It is useful to quote the said statement in full:

I. In July 1965 the Cyprus Inland Telecommunications Authority was established by Law CAP. 302 and took over from Cable & Wireless Ltd., the Internal Telecommunication Services.

II. Among employees taken over by CY.T.A. from Cable and Wireless Ltd., on July 1956, were a number mentioned hereunder with retirement dates ranging from 1957-1965. These employees were engaged by Cable & Wireless Ltd.; prior to 29th September 1929 and were members of the Eastern Pension Fund, which is a non-contributory scheme and guarantees a tax free pension benefit of 50% of final basic salary. The age of retirement stipulated is 55.

	<i>Retired on</i>
S. Bayada	1. 5.59
J. Bayada	1. 4.58
A. Shalhoup	1. 9.59
P. Santi	31.12.61
A.R. Schiadas	1. 3.60
C. Antoniadès	1. 9.60
C. Alkidas	6.11.65
D.J. Vardis	1. 3.60

III. All other employees taken over by CY.T.A. from Cable and Wireless Ltd., on 1st July 1956, engaged after the 29th September 1929 were enrolled under different contributory Pension Schemes (Communications Superannuation Fund and Suspense A/C Fund) which *inter alia* provide increased benefits and retirement at the age of 60.

IV. Employees from Cable & Wireless Ltd., were taken over by CY.T.A. on conditions similar to those they enjoyed with C. & W. Ltd., *i.e.* members of the Eastern

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Pension Fund to retire at the age of 55 and those of the other Funds to retire at the age of 60.

V. The Cyprus Telecommunications Authority in its new Draft Superannuation Scheme, accepted all those employees taken over from Cable & Wireless Ltd., who were members of the contributory Fund (Superannuation Suspense Account and Suspense A/C Fund) as well as subsequently appointed employees, but excluded taken over employees, who were members of the Eastern Pension Fund. The latter have to resign at the age of 55 and similar action is being taken by C. & W. Ltd.

VI. All members of the Eastern Pension Fund quoted in para. II, on the insistence of the Authority, did resign at the age of 55 as provided by the said Fund although *some of them made strong representations to the Government*. However also the Unions at the time were against prolongation of their service (Attached as Appendix please find copy of answer of Government to petition of Mr. Vardis member of the Eastern Pension Fund, and relative statement of the Union).

VII. The only employee, member of the Eastern Pension Fund still in the Service of the Authority, is Mr. Costas Alkidas, Officer in Charge of our Larnaca Office. He is due to retire as from 6th November, 1965, and notice was given to him to this effect. Upon receipt of this notice Mr. Alkidas filed an application in the Supreme Court against the Public Service Commission and the Authority declaring that the Authority's decision to retire him is null and void. In this application he furthermore alleges that it was the Public Service Commission and not the Authority who should retire him.

VIII. Mr. Alkidas applied in 1965" — apparently by way of a clerical error 1965 was typed instead of 1959, when *exhibits 2 and 3, supra*, were written — "to join the C.Y.T.A. Pension Fund and received the answer that his application will be considered in due course.

IX. The Authority is not in a position to make an exception in the case of Mr. Alkidas and exted his retiring age upto 60.

Mr. Alkidas was duly notified of this through a letter dated 5th May, 1965".

It is convenient to examine next, in this Judgment, what was the role of the Commission regarding the retirement of the Applicant:

As the time of the retirement of the Applicant was not prescribed directly by express legislative provision, so that it could be implemented automatically by means of administrative action taken in accordance with such provision, it was a matter which had to be dealt with by the Public Service Commission in the exercise of its competence under Article 125 of the Constitution (see *Rouhi and The Republic*, 2 R.S.C.C. p. 84 and *Papassavas and The Republic*, Case 185/66, not reported yet*); the Commission was called upon to decide, in the light of the terms and conditions of service applicable to Applicant, at what age he was to be retired.

I am of the opinion, on the basis of the totality of the material before the Court, that the Commission has not treated the retirement of the Applicant as an imperative course, automatically to be adopted at the beckoning of CYTA, but it went into the matter duly. This is clear, *inter alia*, from the fact that it did not proceed immediately, on the 20th September, 1965, to decide to retire Applicant on the strength of the relevant letter of CYTA, but it decided to defer consideration to a later date and request the presence of the Secretary and legal adviser of CYTA; then on the 23rd September, 1965, the Commission went fully into all relevant details, as it appears from its minutes, *exhibit 7*, and reached a decision in the matter, giving full reasons for doing so. It is worth quoting the said decision in toto:

“Mr. C. Alkidas was appointed to the Service of the Eastern Telegraph Company before the 29th September, 1929, and became a Member of the non-contributory Eastern Pension Fund. Under the rules and conditions applicable to that Fund, Mr. Alkidas was required to retire from the Company’s service on attaining the age of 55 years. The Eastern Telegraph Company was later amalgamated with Cable & Wireless Ltd., but Mr. Alkidas retained his previous conditions of service.

Mr. Alkidas was taken over by CYTA on 1.7.56, together with other employees under the provisions of section 28

* Now reported in this Part at p. 111 *ante*.

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of the Inland Telecommunications Service Law, Cap. 302 and of Clause 7 of the First Schedule thereto. Under those provisions he retained the conditions of service applicable to him under Cable and Wireless Ltd.

Employees of the Cable & Wireless Ltd., taken over by CYTA in July, 1956, who were appointed after 29.9.29 and other employees appointed to the service of the Authority after 1.7.56 have been enrolled under different superannuation schemes and their compulsory age of retirement is 60 years. Mr. Alkidas, according to Mr. Kokkinides' statement, applied to the Authority in 1959 for his enrolment under one of these schemes. The Authority did not approve his application. Never before 1959 had Mr. Alkidas applied for the modification of his conditions of service as regards retirement and superannuation benefits. All the other employees who were members of the Eastern Pension Fund retired at the age of 55 years.

The Commission after considering the facts of the case as given above, came to the conclusion that Mr. Alkidas has, since 1.7.56, continued to be a Member of the Eastern Pension Fund and his retirement continues to be governed by the rules of the Fund. The Commission accordingly decided that Mr. Alkidas be retired as from the 6.11.65 on attaining the age of 55 years".

The Applicant was an officer, whose retirement was, indeed, governed, because of the history of his employment, by special provisions, namely, those of the Eastern Pension Fund, as rightly found by the Commission in its above-quoted decision. The fact that he had come, in relation to his retirement, under the competence of the Commission, by virtue of Article 122 and 125 of the Constitution, did not entail also the alteration of the provisions regarding his tenure of office (see *Rossides and The Republic* 3 R.S.C.C., p. 95).

In the circumstances, I am of the opinion that the Commission has acted quite properly in retiring the Applicant when it did; it decided the matter in accordance with the terms of the Applicant's service and no extension of such service could properly be granted, after the prescribed retirement age, once no recommendation for such an extension, in the exigencies of the service, had been made by CYTA.

The Applicant has argued that by being retired at the age of fifty-five years he has been given unequal treatment inasmuch as the retirement age for other CYTA employees is the age of sixty years; he alleged that, having become a CYTA employee, he was entitled to be retired, also, at the age of sixty years. In this connection it has been argued on behalf of the Applicant that his terms of service had been assimilated to those of all other CYTA employees; and reliance was placed for the purpose on a letter dated the 13th April, 1961 (see *exhibit 4*) addressed to the Applicant by the Personnel Officer of CYTA regarding new arrangements about the house accommodation of Officers in Charge, such as the Applicant. I can find nothing in the said letter, or in any other document before me, to lead me to the conclusion that the Applicant, whose pension rights were provided for under the Eastern Pension Fund, had been accorded new terms of service, in relation to his retirement, inconsistent with the provisions of such Fund, which provided for retirement at the age of fifty-five years. Only an unequivocal act to that effect could bring about such a result—and none exists. Once the Applicant's retirement continued to be governed by the provisions of the said Fund his position was different from that of other employees of CYTA who were not members of that Fund. As it has been repeatedly stressed (see, *inter alia*, *Mikrommatis and The Republic*, 2 R.S.C.C., p. 125) equality of treatment can only be called for where there exists equality in the inherent nature of things; and, in my opinion, this was not so in the case of the Applicant *vis-a-vis* other employees of CYTA, who were not members of the Eastern Pension Fund but who were subject to other arrangements providing for retirement at the age of sixty years.

In the circumstances, I take the view that it was reasonably and properly open to the Commission to differentiate as between the Applicant and other employees of CYTA, who were not governed, regarding retirement, by the provisions of the Eastern Pension Fund, and, actually, in my opinion, had the Commission taken the course of not retiring the Applicant at the age of fifty-five years, it would be, in effect, granting him unequal and favourable treatment *vis-a-vis* those employees who being members of the Eastern Pension Fund had all been retired at the age of fifty-five years, and not of sixty years (see *exhibit 6 (b)*).

For all the foregoing reasons, this recourse fails and is hereby

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dismissed; but I am not prepared to make an order for costs against the Applicant, because the matter of his retirement gave rise to certain issues which he was quite entitled to bring to this Court for determination, in view of their particular nature.

Application dismissed.
No order as to costs.