

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION.

PRAXITELIS VOYIAZIANOS

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE BOARD FOR THE REINSTATEMENT OF DISMISSED  
PUBLIC OFFICERS,

*Respondent.*

REPUBLIC  
VOYIAZIANOS  
v.  
REPUBLIC  
(BOARD FOR THE  
REINSTATEMENT  
OF DISMISSED  
PUBLIC  
OFFICERS)

(Case No. 251/65)

*Public Officers—Dismissed public officers—Reinstatement—Claim for reinstatement by a regular weekly employee under the Dismissed Public Officers Reinstatement Law, 1961 (Law No. 48 of 1961)—Applicant not an “entitled officer” for the purposes of the said Law—Because at the material time he was not the holder of a “public office” within section 2 of the Law—Applicant’s claim cannot be sustained on the principle of equality, either—See herebelow under Constitutional Law.*

*Constitutional Law—Principle of equality safeguarded by Articles 6 and 28 of the Constitution—Unequal treatment or discrimination contrary to these Articles—There can be no right to equal treatment on an illegal basis—Because in three earlier cases the Respondent Board took an erroneous view of the law—It does not follow that Applicant in the present recourse can be held to be entitled to the same error on the part of the Board—Indeed, the Applicant has no legitimate interest to expect an illegal decision of the Board in his favour.*

*Discrimination—Discrimination contrary to Articles 6 and 28 of the Constitution—See above.*

*Equality—Principle of—See above.*

*Unequal treatment—Contrary to Articles 6 and 28 of the Constitution—See above.*

*Reinstatement—Reinstatement of dismissed public officers under Law No. 48 of 1961 (supra—See above).*

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*Dismissed Public Officers—Reinstatement—See above.*

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In this recourse, under Article 146 of the Constitution, the Applicant complains against the refusal of the Respondent Board to treat him as an “entitled officer” for the purposes of reinstatement under the provisions of the Dismissed Public Officers Reinstatement Law, 1961 (Law No. 48 of 1961).

At the hearing of the case the Applicant has conceded that he does not, in fact, come within the provisions of the said law No. 48/61 and that, therefore, he could not be lawfully treated as being an “entitled officer” for the purpose of that Law, inasmuch as at the material time he was not a holder of a “public office” within section 2 of the said Law, in that he was only a regular weekly employee and not the holder of an office specifically budgeted for; and actually it is on this ground that the Respondent Board has turned down the Applicant’s application for reinstatement.

Counsel for Applicant has submitted, however, that the Applicant is a victim of discrimination, contrary to Articles 6 and 28 of the Constitution, in that three other persons, who for the same reasons as the Applicant could not be treated as “entitled officers” under the said Law No. 48 of 1961 (*supra*), were in fact paid compensation under that Law; and it is not disputed by counsel for the Respondent that, indeed, the said three persons were in the same position *vis-a-vis* section 2 of the Law (*supra*), as the Applicant.

Article 6 of the Constitution reads as follows:

“Subject to the express provisions of this Constitution no law or decision of the House of Representatives or of any of the Communal Chambers, and no act or decision of any organ, authority or person in the Republic exercising executive power or administrative functions, shall discriminate against any of the two Communities or any person as a person or by virtue of being a member of a Community.”

Paragraph 1 of Article 28 of the Constitution provides:

“1. All persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby.”

The Court in dismissing the recourse:

*Held*, (1). It is not disputed that the *sub judice* decision of the Respondent is, indeed, in law a correct one.

(2) In the circumstances, I am of the opinion that no question of unequal treatment of, or discrimination against, the Applicant, contrary to Articles 6 and 28 of the Constitution, could arise at all. There can be no right to equal treatment on an illegal basis; and because the Respondent in earlier cases took an erroneous view of the law, the Applicant in this recourse cannot be held to be entitled to the same error on the part of the Respondent. The Applicant has no legitimate interest to expect an illegal decision of the Respondent Board in his favour.

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*Application dismissed.*  
*No order as to costs.*

*Per curiam*: Applicant failed in law; but I have not, in any way, decided, also, that he does not have a *moral* claim to an *ex gratia* payment, once such payment has been made to others who could not come within the strict letter of law 48 of 1961 (*supra*) for the same reason as the Applicant.

#### **Recourse.**

Recourse against the refusal of the Respondent Board to treat Applicant as an "entitled Officer" for the purposes of the Dismissed Public Officers Reinstatement Law, 1961 (Law 48/61).

*L. Clerides* for the Applicant.

*M. Spanos*, Counsel of the Republic, for the Respondent.

*Cur. adv. vult.*

The following Judgment was delivered by:

TRIANAFYLLIDES, J.: In this recourse the Applicant complains, by his first claim in the motion for relief, against the refusal of the Respondent Board to treat him as an "entitled officer" for the purposes of reinstatement under the provisions of the Dismissed Public Officers Reinstatement Law, 1961 (Law 48/61); the said refusal was communicated to the Applicant by letter dated the 10th December, 1965 (see *exhibit* 1).

There exists, also, a second, alternative, claim of the Applicant

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by which he complains, in effect, of an omission of the Respondent to reinstate him; such claim is neither well-founded nor necessary, since there exists in the matter a decision of the Respondent which has been taken in the exercise of the relevant statutory powers and has been communicated to the Applicant by means of the aforesaid letter of the 10th December, 1965.

Though in the Application in this recourse the Applicant has pleaded that the *sub judice* decision of the Respondent is contrary to the provisions of Law 48/61, at the hearing he has conceded that he does not, in fact, come within the provisions of Law 48/61 and that, therefore, he could not be lawfully treated as being an "entitled officer" for the purposes of such Law, inasmuch as at the material time he was not a holder of a "public office" in the sense of section 2 of the said Law, in that he was only a regular weekly employee and not a holder of an office specifically budgeted for; and actually it is on this ground — as it appears from the letter of the 10th December, 1965 (*exhibit 1*) — that the Respondent has turned down the application of the Applicant for reinstatement.

Counsel for the Applicant has submitted, however, that the Applicant is a victim of discrimination, contrary to Article 6 and 28 of the Constitution, in that three other persons, the Applicants in recourses 259/62, 268/62 and 6/63 — who for the same reasons as the Applicant could not be treated as "entitled officers" under Law 48/61 — were in fact paid compensation under such Law; and it is not disputed by counsel for Respondent that, indeed, the said three persons were in the same position, *vis-a-vis* section 2 of Law 48/61, as the Applicant.

As it appears from the files of the said recourses, which have been put in evidence in the present proceedings, the Applicants therein were originally held to be "entitled officers" by the Respondent, but, later, the Accountant-General refused payment of the compensation due to them on the ground that, under section 2 of Law 48/61, they were not entitled to reinstatement; then the above-mentioned recourses were filed, but they were never determined because it was, eventually, agreed to, by the Ministry of Finance, under which comes the Accountant-General, that the said Applicants would be deemed to be "entitled officers", provided that they would receive only part of the relevant compensation, namely, that two of them would receive 90%, and one of them 85%, of such

compensation; upon the above agreement the three recourses in question were withdrawn and struck out.

There can be no doubt that payment to the Applicants in recourses 259/62, 268/62 and 6/63 was made *ex gratia*, by way of settlement of pending recourses; the position therein was, indeed, a somewhat peculiar one because the Respondent Board had decided that they *were* entitled officers, and the Accountant-General had taken the view that the relevant decisions of the Board *could not* be lawfully implemented.

It appears that, subsequent to the aforesaid recourses, the Respondent realized that the view of the Accountant-General was a correct one in law and, therefore, the in all material respects similar claim of this Applicant for reinstatement was turned down by Respondent, without the Accountant-General having to intervene in the matter; and the Applicant does concede that the *sub judice* decision of Respondent is, indeed, a correct one legally.

In view of the above circumstances, I am of the opinion that no question of unequal treatment of, or discrimination against, the Applicant could arise, at all, contrary to Article 28, or Article 6, of the Constitution. There can be no right to equal treatment on an illegal basis; because in earlier cases the Respondent took an erroneous view of the law, Applicant in this recourse cannot be held to be entitled to the same error on the part of the Respondent. The Applicant had no legitimate interest to expect an illegal decision of the Respondent in his favour.

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As a result, this recourse fails on the ground of unequal treatment and discrimination; and, there being no other ground of invalidity of the *sub judice* decision which has been put forward by Applicant, it is dismissed accordingly.

The Applicant has failed in law; but I have not, in any way, decided, also, in this Case, that Applicant does not have a *moral* claim to an *ex gratia* payment, once such a payment has been made to others who could not come within the strict letter of Law 48/61 for the same reason as the Applicant. But this is not a matter to be decided by me; it is up to the appropriate authorities of the Republic to consider it; and I do hope that Applicant will meet with sympathetic

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consideration if it is ascertained that his position does not differ materially from that of the Applicants in Cases 259/62, 268/62 and 6/63.

There shall be no order as to costs.

*Application dismissed.*  
*No order as to costs.*