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LEONTIOS
PAPALEONTIOU
v.
REPUBLIC
COUNCIL OF
MINISTERS
AND ANOTHER)

[TRIANTAFYLIDIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LEONTIOS PAPALEONTIOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE COUNCIL OF MINISTERS,
2. THE MINISTER OF FINANCE,

Respondent.

(Case No. 31/66).

Public Officers—Pension and Gratuity—Termination of employment in the public interest—The Pensions Law, Cap. 311, sections 6 (e) (f) and 7—Competence of the Public Service Commission or competence of the Council of Ministers in the matter—Articles 54 and 125.1 of the Constitution—Unequal treatment or discrimination contrary to Article 28 of the Constitution—Discretion—Proper use of—In the present case it was held that the sub judice decision refusing to the Applicant pension or gratuity : (a) Was within the residual competence of the Council of Ministers under Article 54 of the Constitution, and not within the competence of the Public Service Commission under Article 125.1 of the Constitution ; (b) did not amount to unequal treatment or discrimination against the Applicant contrary to Article 28 ; and (c) was duly reasoned in the circumstances—See, also, herebelow.

Public Service Commission—Competence—Article 125.1 of the Constitution—The sub judice decision was outside such competence, but within the residual competence of the Council of Ministers under Article 54 of the Constitution—See, also, hereabove.

Council of Ministers—Competence—Residual competence of the Council of Ministers under Article 54 of the Constitution—See above under Public Officers ; Public Service Commission.

Constitutional Law—Public Service Commission—Competence—Article 125.1—Council of Ministers—Competence—Residual competence—Article 54 of the Constitution—Discrimination and unequal treatment—Article 28 of the Constitution—Treating differently, essentially different cases does not amount to a

discrimination or unequal treatment—See, also, above under Public Officers ; Public Service Commission ; Council of Ministers.

Administrative Law—Administrative decisions—Reasons—May be found either in the decision itself or in the submissions or official records related thereto—See, also, under Public Officers, above.

Reasons—Administrative decisions—Must be duly reasoned—See above under Public Officers ; Administrative Law.

Administrative decisions—Reasons—See above.

Discrimination or unequal treatment—See above under Constitutional Law.

Unequal treatment—Discrimination—See above under Constitutional Law.

Public Service—See above under Public Officers.

Pension and gratuity—In case of termination of a public officer's employment in the public interest—Sections 6 (e) (f) and 7 of the Pension Law, Cap. 311—Discretion—See above under Public Officers ; Public Service Commission ; Council of Ministers.

Discretion—Proper use of—See above under Public Officers.

Competence—Residual competence of the Council of Ministers—Article 54 of the Constitution—Public Service Commission—Competence—Article 125.1 of the Constitution—See above under Public Officers ; Public Service Commission ; Council of Ministers.

Termination of Employment—Of Public Officers in the public interest—Pension and gratuity—Discretion—Competence—See above under Public Officers.

In this case the Applicant complains against a decision of the Council of Ministers, dated the 20th January, 1966, not to treat his resignation from the public service as termination of his services in the public interest so as to enable him to receive a pension and gratuity under sections 6 (f) and 7 of the Pensions Law, Cap. 311.

The Applicant, a Court Stenographer 2nd Grade, secured in November, 1965, employment in the service of the United Nations abroad. Eventually, on the 1st January, 1966, he wrote to the Council of Ministers, through the Personnel Department in the Ministry of Finance stating that, in view of certain facts referred to therein, he had no other alternative

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than to resign on the 1st February, 1966, as he had already made arrangements to take up duty as from that date with the United Nations, in India and Pakistan. By the same letter he requested to be granted on resignation a pension and gratuity ; he based his request mainly on grounds of public interest—in view of the fact that he was resigning in order to serve the United Nations—and he asked for the same treatment as was accorded to another Court Stenographer, Mr. S., who had earlier left the public service in order to take up employment abroad with the United Nations and had been granted a pension and gratuity. As already stated, the Council of Ministers by its decision of the 20th January, 1966, refused the request of the Applicant, who on the 31st January, 1966, submitted formally his resignation to the Public Service Commission which resignation was accepted.

It has been argued on behalf of the Applicant that it was not the Council of Ministers, but the Public Service Commission under Article 125.1 of the Constitution, which was the competent organ to deal with Applicant's said request contained in his aforementioned letter of the 1st January, 1966. The next point raised on behalf of the Applicant was that he has been the victim of unequal and discriminatory treatment contrary to Article 28 of the Constitution, in view of the fact that two other Court Stenographers, Messrs. Sarkissian and Karaviotis, having resigned and taken up employment with the United Nations abroad, were treated as having retired in the public interest, enjoying in full their accrued retirement benefits. It was, also, further argued that the *sub judice* decision was not duly reasoned.

Article 125.1 of the Constitution reads as follows :

“ 1. Save where other express provision is made in this Constitution with respect to any matter set out in this paragraph and subject to the provisions of any law, it shall be the duty of the Public Service Commission to make the allocation of public offices between the two Communities and to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer, retire and exercise disciplinary control over, including dismissal or removal from office of, public officers.”

Article 54 of the Constitution provides :

“ Subject to the executive power expressly reserved, under Articles 47, 48 and 49, to the President and the Vice-

President of the Republic, acting either separately or conjointly, the Council of Ministers shall exercise executive power in all other matters other than those which, under the express provisions of this Constitution, are within the competence of a Communal Chamber, including the following” :

“ (a) ”.

Section 6 (f) of the Pensions Law, Cap. 311, provides that a pension, gratuity or other allowance may be granted to a public officer in case of termination of his employment in the public interest. Section 7 of the said Law lays down that where a public officer's service is terminated on the ground that, having regard to the conditions of the public service, the usefulness of the officer thereto and all the other circumstances of the case, such termination is desirable in the public interest, and a pension, gratuity or other allowance cannot otherwise be granted to him under the provisions of the Law, Cap. 311 (*supra*), the Governor (now the Council of Ministers) may if he thinks fit, grant him such pension, gratuity or other allowance as he thinks just and proper, not exceeding in amount that for which the officer would be eligible if he retired from service in the circumstances described in paragraph (e) of section 6 of Cap. 311 (*i.e.* in case of retirement on medical grounds).

In dismissing the recourse on all grounds, the Court:

Held, I. As to the issue of the alleged competence of the Public Service Commission and the alleged lack of competence of the Council of Ministers in the matter in view of Article 125.1 of the Constitution :

(1) Without going fully into the extent of the competence of the Public Service Commission, under Article 125.1 of the Constitution, in matters of retirement or termination of services of public officers, I am satisfied that in the present instance it was the Council of Ministers which was the competent organ to deal with the matter involved in this recourse.

(2) Whether or not the request of the Applicant would be granted was a question entailing considerations of public interest and Government policy, as well as financial consequences; these matters were beyond the limited and specifically laid down competence of the Public Service Commission under Article 125.1

of the Constitution (*supra*), and within the residual competence of the Council of Ministers under Article 54 of the Constitution.

Held, II. As to the argument regarding discrimination and unequal treatment :

(1) On the material before me, I cannot say that the Council of Ministers was not reasonably entitled, in the exercise of its discretion, to treat the Applicant's case differently from the cases of the aforesaid Messrs. Sarkissian and Karaviotis ; thus, no question of unequal treatment or discrimination could arise.

(2) The cases of the aforementioned two public officers appear to be different from that of the Applicant because, though all three of them were leaving the public service in order to serve the United Nations, sight must not be lost of the fact that Mr. Sarkissian and Mr. Karaviotis were at the time aged forty years or more, they had reached the top grade of Court Stenographers as well as the top of their salary scale, many years ago, and they had no further prospects of promotion ; on the other hand, the Applicant was only thirty-one years old, he was still a Court Stenographer 2nd grade and, thus, he had prospects of promotion ; he was not at a dead end like Messrs. Sarkissian and Karaviotis.

Held, III. As regards the submission that the sub judice decision was not duly reasoned :

I find no merit in this submission, in view of the fact that the reasons which led to such decision can be amply derived from the relevant submission to the Council of Ministers (which is part of *Exhibit 22* in this case) ; it is well established that the reasoning behind an administrative decision may be found either in the decision itself or in the official records related thereto.

Recourse dismissed. No order as to costs.

Recourse.

Recourse against the decision of the Council of Ministers not to treat Applicant's resignation from the public service as termination of his services in the public interest, so as to enable him to receive a pension and gratuity.

A. Triantafyllides, for the Applicant.

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

Cur. adv. vult.

The following Judgment was delivered by:

TRIANTAFYLIDIS, J.: In this Case the Applicant complains, in effect, against a decision of the Council of Ministers not to treat his resignation from the public service as termination of his services in the public interest, so as to enable him to receive a pension and gratuity.

His request for the purpose is to be found in a letter addressed by him to the Government, through the Personnel Department in the Ministry of Finance, and dated the 1st January, 1966 (see *exhibit 3(b)*). The relevant decision (No. 5332) of the Council of Ministers is dated the 20th January, 1966 (see *exhibit 22*).

The provisions of law relevant to the present matter appear to be sections 6(f) and 7 of the Pensions Law, Cap. 311.

It is provided under section 6(f) that a pension, gratuity or other allowance may be granted to a public officer in case of termination of his employment in the public interest.

Section 7 lays down that where a public officer's service is terminated on the ground that, having regard to the conditions of the public service, the usefulness of the officer thereto and all the other circumstances of the case, such termination is desirable in the public interest, and a pension, gratuity or other allowance cannot otherwise be granted to him under the provisions of Cap. 311, the Council of Ministers may, if it thinks fit, grant him such pension, gratuity or other allowance as it thinks just and proper, not exceeding in amount that for which the officer would be eligible if he retired from the public service in the circumstances described in paragraph (e) of section 6 of Cap. 311 (i.e. in case of retirement on medical grounds).

The relevant facts of this Case are shortly as follows:

The Applicant, in November 1965, while being a Court Stenographer 2nd grade, secured employment in the service of the United Nations abroad, having applied for such employment in October, 1965.

In the meantime he had applied, on the 11th October, 1965, for a year's leave of absence without pay, so as to go abroad in the service of the United Nations, (see *exhibit 7*). The Council of Ministers, initially, granted him the leave applied for, but imposed a condition which could not be met in the light of the exigencies of the judicial service and, thus, eventually, the Applicant did not get the leave he had asked for:

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On the 1st January, 1966, the Applicant wrote to the Personnel Department (see *exhibit 3(b)*) stating that, in view of the fact that the condition under which the Council of Ministers was prepared to approve his year's leave could not be fulfilled, he had no other alternative than to resign on the 1st February, 1966, as he had made arrangements to take up duty, as from that date, with the United Nations Observers Group in India and Pakistan. By the same letter he requested, as already stated, to be granted on resignation a pension and gratuity; he based his request mainly on grounds of public interest—in view of the fact that he was resigning in order to serve the United Nations—and he asked for the same treatment as was accorded to another Court Stenographer, Mr. Sarkissian, who had earlier left the public service in order to take up employment abroad with the United Nations and had been granted a pension and gratuity.

In the meantime, another Court Stenographer 1st grade, Mr. Karaviotis, secured, also, employment abroad with the United Nations and he submitted an application to Government, dated the 11th January, 1966 (which is part of *exhibit 22*) applying for leave to retire from the public service on grounds of public policy.

Mr. Karaviotis, at the time, was forty years old and had been in the public service since 1944; he had been drawing the maximum salary of the salary scale of Court Stenographer, 1st grade, for the past eleven years. On the other hand the Applicant was at the time thirty-one years old and was yet a Court Stenographer 2nd grade.

As it appears from a letter of the Ministry of Justice, dated the 14th January, 1966 (which is again part of *exhibit 22*) there had been in the past three previous cases in which public officers had secured employment abroad with the United Nations and had been allowed to retire in the public interest, with the full pension and gratuity which they had earned till the day of the termination of their services; the said officers were Mr. S. Vassiliou, Chief Statistics and Research Officer, Mr. D. Christodoulou, Agricultural Officer, and, the aforementioned Mr. Sarkissian, Court Stenographer.

Both the cases of the Applicant and of Mr. Karaviotis were dealt with by means of one and the same decision of the Council of Ministers (No. 5332) dated the 20th January, 1966, and it was decided to approve the termination of the services of

Mr. Karaviotis in the public interest, under sections 6(f) and 7 of Cap. 311 and grant to him all retirement benefits earned by him till then, and to reject the application of the Applicant (see *exhibit 22*).

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It appears that by the 31st January, 1966, the Applicant had not yet been notified of this decision of the Council of Ministers. On that date he submitted formally his resignation to the Public Service Commission and it was accepted (see *exhibits 3(a)* and 6); this step by the Applicant must be regarded as taken in formal completion of his resignation, as communicated, already, to Government by his previous letter of the 1st January, 1966 (*exhibit 3(a)*)—by means of which he applied, also, that his resignation should be treated as termination of services in the public interest.

It has been argued by the Applicant that it was not the Council of Ministers, but the Public Service Commission under Article 125.1 of the Constitution, which was the competent organ to deal with his request contained in his aforementioned letter of the 1st January, 1966.

Without going fully into the extent of the competence of the Commission—under Article 125.1—in matters of retirement or termination of services of public officers, I am satisfied that in the present instance it was the Council of Ministers which was the competent organ to deal with the matter involved in this recourse:

What happened was, in essence, that the Applicant had decided, on his own, to resign and he did communicate this to Government by his letter of the 1st January, 1966; he coupled the communication of his decision to resign with a request that the termination of his services should be treated as having taken place in the public interest, but he did not make his resignation conditional upon his request being granted.

Whether or not the request of the Applicant would be granted was a question entailing considerations of public interest and Government policy, as well as financial consequences; these matters were beyond the limited and specifically laid down competence of the Public Service Commission under Article 125.1, and within the residual competence of the Council of Ministers under Article 54 of the Constitution.

The next point which has been raised by the Applicant; and with which it is necessary to deal in this Judgment, is that the

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Applicant has been the victim of unequal and discriminatory treatment in view of the fact that two other, already mentioned, Court Stenographers, Mr. Sarkissian and Mr. Karaviotis, were treated as retired in the public interest, enjoying in full their accrued retirement benefits.

The earlier decision of the Council of Ministers in the case of Mr. Sarkissian (No. 5004) is dated the 16th September, 1965, (see *exhibit* 23). He had applied on the 11th August, 1965, for leave to retire from the public service "on grounds of public policy".

It appears that when the matter came for the first time before the Council of Ministers the issue of the competence of the Council to deal with it was examined by the Attorney-General; and his advice—correct in my view—is part of the submission to the Council regarding the case of Mr. Sarkissian (see *exhibit* 23).

Mr. Sarkissian, as it appears from the submission in question, had been serving in the public service since 1947, and had been holding the post of Court Stenographer 1st grade since 1954. He had been receiving the maximum salary of the relevant salary scale for nine years past. At the material time he was forty-two years old.

On all the material before me, regarding the cases of Mr. Sarkissian, of Mr. Karaviotis and of the Applicant, I cannot say that I am satisfied that the Council of Ministers was not reasonably entitled, in the exercise of its discretion, to treat the Applicant's case differently from the cases of Mr. Sarkissian and of Mr. Karaviotis; thus, no question of unequal treatment or discrimination could arise.

The cases of Mr. Sarkissian and of Mr. Karaviotis appear to be essentially different from that of the Applicant because, though all three of them were leaving the public service in order to serve the United Nations, sight must not be lost of the fact that Mr. Sarkissian and Mr. Karaviotis were at the time aged forty years or more, they had reached the top grade of Court Stenographers, as well as the top of their salary scale, many years ago, and they had no further prospects of promotion; on the other hand, the Applicant was only thirty-one years old, he was still a Court Stenographer 2nd grade and, thus, he had prospects of promotion; he was not at a dead end like Mr. Sarkissian and Mr. Karaviotis.

It has been argued by counsel for the Applicant that the Council of Ministers had acted without competence when dealing earlier on, in the way it did, with the application of the Applicant for a year's leave of absence without pay, and that the competent organ to deal with such application was the Public Service Commission; counsel has submitted that had the Council known that it had acted without competence in that matter, it would, perhaps, have taken a different view regarding the request of the Applicant that his resignation should be treated as termination of services in the public interest; also, that the Applicant must have been influenced, by his failure to obtain a year's leave, in deciding to submit his resignation.

I quite accept that the Applicant decided to resign from the public service when he found that he could not obtain a year's leave of absence without pay. But, irrespective of whether or not the Council acted with or without competence in dealing with the question of such leave, the fact remains that the matter of the leave and the matter of treating the resignation of the Applicant as termination of services in the public interest were two absolutely separate matters; they did not form part of a composite administrative action in any way. Nor can I find, on the material before me, any proper causation link between the *sub judice* decision and the previous decision of the Council of Ministers on the question of the leave applied for by the Applicant.

The realities of the situation should not be lost sight of: The Applicant, first, secured employment with the United Nations abroad. Then, he tried to put himself in a position to take up such employment with as little harm to his interests—as he saw them—as possible. So he applied, initially, for a year's leave of absence without pay and then, when this did not become possible, he decided to resign and to apply that his resignation be treated as termination of services in the public interest. In the present recourse, we are only concerned with the refusal of his second application and we cannot enter into the validity of what was done or was not done in relation to his first application; the Applicant could have challenged the decision reached on such application but he did not do so.

Lastly, regarding the complaint that the *sub judice* decision of the Council of Ministers is not duly reasoned I find no merit therein, in view of the fact that the reasons which led to such decision can be amply derived from the relevant submission

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to the Council of Ministers (which is part of *exhibit 22*); it is well established that the reasoning behind an administrative decision may be found either in the decision itself or in the official records related thereto.

For all the above reasons this recourse fails and is dismissed accordingly.

Regarding costs, I have decided, in all the circumstances of the Case, to make no order as to costs.

Application dismissed.
No order as to costs.