

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANNIKA CHRISTODOULOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH

THE PUBLIC SERVICE COMMISSION,

Respondent.

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CHRISTODOULOU
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

(Case No. 22/67).

Public Officers—Retirement—Retirement of a female public officer on the ground of marriage—The Pensions Law, Cap. 311, section 8(1) as it stood prior to its amendment by section 7 of the Pensions (Amendment) Law, 1967 (Law No. 9 of 1967)—A female public officer may, under section 8(1), be required or permitted to retire for the reason that “she has married or is about to marry”—Competence—In view of Article 125.1 of the Constitution, the Respondent Public Service Commission is now the competent organ to deal with such matter—Section 8(1) (supra) and the right to marry as now safeguarded by Article 22 of the Constitution—Provisions of that section have now, under Article 188.4 of the Constitution, to be applied with such modifications as to be brought into accord with the Constitution i.e. with Article 22 thereof—And, also, with Article 125.1 of the Constitution—Articles 22, 188, paragraphs 1, 3(b) and 4, of the Constitution—See, also, herebelow.

Public Officers—Female Public Officers—Retirement on account of marriage—Section 8(1) of the Pensions Law, Cap. 311 (prior to its amendment in 1967, supra)—Request by a female public officer for permission to retire for the reason that “she has married”—Request made three years after her marriage—The Respondent Commission acted on a wrong legal basis in rejecting the Applicant’s said request on the sole ground that such request was not within section 8(1) of Cap. 311 (supra) because it was not made shortly after her marriage—Section 8(1) has now, under Article 188.4 of the Constitution, to be construed in such a manner as to be brought into accord with Article 22 of the Constitution (supra)—It follows that the notion and effect of the words “has married”

in section 8(1) are wide enough to apply to the case of the Applicant—Because, in view of Article 22, it would no longer be possible to apply section 8(1) for the purpose of retiring compulsorily a female officer merely because of the very fact that she was about to marry or she had married—Correspondingly the right of a female officer to apply for permission to retire for the reason that she is about to marry or she has married, must be looked upon as no longer directly linked to the event of her marriage, as such—But as related to the consequences of her marriage—See, also, hereabove under Public Officers.

Constitutional Law—Marriage—Right to marry as safeguarded by Article 22 of the Constitution—Effect of that Article on the provisions of section 8(1) of the Pensions Law, Cap. 311 (supra) regarding retirement of female public officers on account of marriage—Laws which continue in force after the establishment of the Republic, by operation of Article 188.1 of the Constitution—Must be applied with such modifications as to be brought into accord with the Constitution—Article 188.4—Public Service Commission—Competence in relation to retirement of public officers—Article 125.1 of the Constitution—Laws which continue in force after the establishment of the Republic—Reference in any such law to “the Governor” shall be construed, in matters relating to the exercise of the executive power, as a reference to the Council of Ministers unless the context otherwise requires—See, also, under Public Officers above; and see further below under Recourse under Article 146; composite administrative action.

Administrative Law—Decision taken on a wrong legal basis—Discretion—Refusal to exercise discretion because of a misconception of law—See above under Public Officers—See, also, herebelow under composite administrative action.

Recourse under Article 146 of the Constitution—Powers of the Supreme Court—Competence of the administrative organ concerned—The Court has power to deal ex proprio motu with the issue whether or not the Respondent administrative organ was competent to take the decision complained of in such a recourse.

Marriage—Right to marry—Article 22 of the Constitution—Effect of that Article on the provisions of section 8(1) of the Pensions Law, Cap. 311 (supra) dealing with retirement (compulsory or voluntary) of female public officers on account of their marriage—See above under Public Officers.

Women—Public Officers—Retirement on account of marriage—See above under Public Officers.

Female Public Officers—Retirement on account of marriage —See above under Public Officers.

Public Service Commission—Competence—Retirement of female public officers on account of marriage—Section 8(1) of Cap. 311 (supra)—See above under Public Officers.

Laws—Laws which continue under Article 188.1 of the Constitution, to remain in force after the establishment of the Republic—References therein to “the Governor”—Article 188.3(b)—Such Laws shall be applied with such modifications as may be necessary to bring them into accord with the Constitution—Article 188.4 of the Constitution—See, also, above under Public Officers, Constitutional Law.

Statutes—See immediately above under Laws.

Composite administrative action—Cases where the Public Service Commission has first to reach a decision—Its decision constituting only the initial stage of a composite administrative action—To be completed by an act or decision of another organ also competent in the matter from another aspect—E.g. the Council of Ministers in the present case under the provisions of Article 54 of the Constitution.

Council of Ministers—Competence—Article 54 of the Constitution —See immediately above under composite administrative action.

Retirement—Retirement of public officers—Retirement of female public officers on account of marriage—See above under Public Officers.

Words and Phrases—“She has married or is about to marry” in section 8(1) of the Pensions Law, Cap. 311, as it stood prior to its amendment by section 7 of the Pensions (Amendment) Law, 1967, (Law No. 9 of 1967)—See under Public Officers hereabove.

Court—Supreme Court in its revisional jurisdiction—Powers to deal ex proprio motu on certain matters although not disputed by the parties—See above under Recourse under Article 146 of the Constitution.

Supreme Court—Ex officio powers in its revisional jurisdiction— See above under Recourse under Article 146 of the Constitution.

By this recourse the Applicant, a lady in the public service, complains against the decision of the Respondent Public Service Commission not to permit her to retire from the public service on the ground of her marriage, under the provisions of section

8(1) of the Pensions Law, Cap. 311, as such provisions were in force at the material time; they have now been amended by section 7 of the Pensions (Amendment) Law, 1967 (Law No. 9 of 1967). Section 8(1), as it then stood, provided that a female public officer might be required or permitted to retire for the reason that "*she has married or is about to marry*".

The facts of the case are shortly as follows:

The Applicant entered the public service in 1957 and on the 1st November, 1961, she was appointed to the pensionable post of Superintendent of Homes, in the Welfare Services in the Ministry of Labour and Social Insurance. In the autumn of 1963 she got married and, three years later, on the 10th October, 1966, she applied to the Respondent Commission to be allowed to retire as from the 6th November, 1966, for family reasons, requesting at the same time to be granted whatever gratuity or pension she might be entitled to under the circumstances. By letter of the 18th October, 1966, the Respondent Commission in reply informed the Applicant that her resignation had been accepted as from the 6th November, 1966, as requested, and that she ought to be granted by that date whatever leave of absence she might be entitled to. On the 5th November, 1966, the Applicant wrote back saying that she had not intended to resign, but she had applied for permission to retire on the ground of her marriage, in accordance with the provisions of section 8(1) of the Pensions Law, Cap. 311 (*supra*); she, further, requested that her case be re-examined by the Commission accordingly. On the 20th December, 1966, the Respondent Commission met and, on the basis of a legal advice given to it by the office of the Attorney-General, decided to turn down the said request of the Applicant on the ground that section 8(1) (*supra*) is applicable only in cases of marriage which had taken place shortly before the request for permission to retire on such ground and that, therefore, it could not be applied to the case of the Applicant who got married three years earlier in 1963 (*supra*). This decision was communicated to the Applicant on the 27th December, 1966; she was, further informed that her resignation continued to be effective.

The Applicant filed on the 28th January, 1967, the present recourse challenging the aforesaid decision of the Respondent Commission. The main issue in this case is whether in view of Article 22.1 of the Constitution the phrase "has married" in section 8(1) (*supra*) is wide enough to apply to the case of

the Applicant. Article 22, paragraph 1, of the Constitution reads as follows:

“1. Any person reaching nubile age is free to marry and to found a family according to the law relating to marriage, applicable to such person under the provisions of this Constitution”.

It is to be noted that laws in force before the establishment of the Republic on the 16th August, 1960, and which continued in force thereafter by operation of Article 188.1 of the Constitution, (and one such law is Cap. 311, *supra*) have to be applied, by virtue of paragraph 4 of the same Article, with such modifications as may be necessary to bring them into accord with the Constitution.

Another issue which was raised and considered *ex proprio motu* by the Court, was whether the Respondent Commission was competent to deal at all with the relevant request of the Applicant. Under section 8(1) of Cap. 311 (*supra*) the relevant competence to require or permit to retire a female person on the ground that “she has married or is about to marry”, was vested, prior to the coming into operation on the 16th August, 1960, of the Constitution, in the Governor. By Article 188.3(b) of the Constitution any reference to the Governor in any law of the Colony of Cyprus continuing in force after the 16th August, 1960, by operation of Article 188.1 of the Constitution, shall be construed as a reference “to the Council of Ministers in matters relating to the exercise of executive power”, but this is to be done “unless the context otherwise requires”. On the other hand there is an express provision in Article 125.1 of the Constitution conferring on the Respondent Commission competence in relation to retirement of public officers; and it should be reminded in this respect that by virtue of paragraph 4 of Article 188 (*supra*) such laws as Cap. 311 (*supra*) have to be applied with such modifications as may be necessary to bring them into accord with the Constitution.

In annulling the decision complained of, the Court:

Held, I. As to whether the Respondent Commission was competent to deal at all with the request of Applicant:

(1) This point has not been contested in the proceedings before me, but it is one of those matters with which the Court has to deal *ex officio* in view of the nature of its revisional jurisdiction.

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(2) (a) Under Article 188.3(b) of the Constitution (*supra*) any reference to the Governor, in a law continuing in force after the coming into operation of the Constitution (*viz.* the 16th August, 1960), shall be construed, in matters relating to the exercise of executive powers, as a reference to the Council of Ministers, "unless the context otherwise requires".

(b) In view of the express provision in Article 125.1 of the Constitution conferring on the Commission competence in relation to retirement of public officers, I am of the opinion that this is a case where the context requires otherwise and in which Article 188.3(b) is consequently inapplicable.

(c) Furthermore in view of the provisions of Article 188.4 of the Constitution (*supra*), section 8(1) of Cap. 311 (*supra*), has to be applied modified so as to be brought into accord with the Constitution, and particularly with the said Article 125.1 of the Constitution (*supra*).

(3) Thus, I have no doubt that the Respondent Commission was competent to deal with the matter in question of the Applicant. The more so, as it is clearly to be derived from the case *Rouhi and The Republic*, 2 R.S.C.C. 84 at p. 87, that any matters of retirement of public officers requiring specific decisions are matters within the competence of the Respondent Commission. (See, also, *Ieromonachou and The Republic* 4 R.S.C.C. 82).

Held, II. As to the merits:

(1) (a) In view of Article 188.4 of the Constitution (*supra*), section 8(1) of the Pensions Law, Cap. 311 (*supra*) has to be applied with such modification as to be brought into accord with the Constitution *i.e.* with Article 22 thereof which safeguards the right to marry (*supra*).

(b) As a result it would no longer be possible to apply section 8(1) for the purpose of retiring compulsorily a female officer *merely because of the very fact* that she was about to marry or she had married; it would, however, be still open to the appropriate organ to retire a female public officer if consequences arising because of her marriage did, in the particular circumstances of her work, interfere with the exigencies of the service; such course would not involve an infringement of the right to marry, as such.

(2) (a) Correspondingly, the right of a female officer to apply for permission to retire, because she is about to marry or she

has married, must be looked upon as no longer directly linked to the event of her marriage, as such, but as related to the consequences of her marriage; for example a female officer might feel that, once she got married, she has to cease working in order to devote herself to her household duties and, thus, she might apply for permission to retire either when she is about to marry or shortly after she has married.

(b) On the other hand, a female officer might find that she has to retire from the service some time after she got married, in view of the fact that she has to look after her children; in such a case her application for permission to retire under section 8(1) would not have to be made shortly after her marriage but at some later date.

(3) I am, therefore, of the view that if section 8(1) of Cap. 311 (*supra*) were to be construed—as it should be under Article 188.4 of the Constitution, *supra*,—in such a manner as to be brought into accord with Article 22 (*supra*), the notion of the words “has married” in that section could be taken as being wide enough to apply to the case of the Applicant.

(4) The Respondent Commission has, thus, acted on a wrong legal basis in rejecting the Applicant’s said request, because it thought, in accordance with the legal advice given to it, that such request was not within section 8(1) (*supra*), as it had not been made shortly after her marriage. Its decision has to be declared null and void and of no effect whatsoever and the matter has to be re-examined by the Respondent in the light of this Judgment.

(5) Of course the granting or refusing of permission to retire is a matter of discretion, to be exercised in the light of the particular circumstances of each case, and, thus, the length of the time which elapsed between the marriage and its relevant consequences and the request for permission to retire is one of the material considerations to be taken into account when re-examining the case of this Applicant.

Decision complained of annulled. No order as to costs.

Per curiam: If the Respondent Commission were to decide, after re-examination of the Applicant’s case, to grant her request, then the relevant administrative action would still have to be completed through the Council of Ministers considering the matter from the wider aspect

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of policy involved therein (in view of the Council's powers under Article 54 of the Constitution). There might well be cases where, in respect of a matter affecting a public officer, the Commission has first to reach a decision, to the extent to which the particular circumstances of such matter are involved, but its decision constitutes only the initial stage of a composite administrative action to be completed by an act or decision of another organ also competent in the matter from another aspect; I leave, however, this question entirely open in this Judgment.

Cases referred to:

Rouhi and The Republic, 2 R.S.C.C. 84, at p. 87;

Ieromonachou and The Republic, 4 R.S.C.C. 82.

Recourse.

Recourse against the decision of the Respondent not to permit Applicant to retire from the public service on the ground of her marriage under the provisions of s. 8(1) of the Pensions Law Cap. 311.

L. Clerides, for the Applicant.

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

Cur. adv. vult.

The following Judgment was delivered by:

TRIANTAFYLIDIS, J.: By this recourse the Applicant Annika (or Ioanna) Christodoulou complains against the decision of the Respondent Public Service Commission not to permit her to retire from the public service on the ground of her marriage, under the provisions of section 8(1) of the Pensions Law, Cap. 311, as such provisions were in force at the material time; they have now been amended by section 7 of the Pensions (Amendment) Law, 1967 (Law 9/67).

The history of relevant events is shortly as follows:

The Applicant entered the public service in 1957 and on the 1st November, 1961, she was appointed to the pensionable post of Superintendent of Homes, in the Welfare Services under the Ministry of Labour and Social Insurance.

In the autumn of 1963, she got married and, three years later,

on the 10th October, 1966, she applied to the Respondent to be allowed to retire as from the 6th November, 1966, for family reasons; she, further, requested to be granted whatever gratuity or pension she might be entitled to (see *exhibit 1*).

Her letter was forwarded to the Respondent through the Director of the Department of Welfare Services on the 11th October, 1966, (see *exhibit 1A*).

By letter of the 18th October, 1966, the Respondent informed the Applicant that her resignation had been accepted as from the 6th November, 1966, and that she ought to be granted by such date whatever leave of absence she might be entitled to (see *exhibit 2*).

On the 5th November, 1966, the Applicant wrote back saying that she had not intended to resign, but she had applied for permission to retire on the ground of her marriage, in accordance with the provisions of section 8(1) of Cap. 311; she requested that her case be re-examined by the Commission accordingly (see *exhibit 3*).

On the 25th November, 1966, the Commission met and considered the matter; it decided in view of the time that had elapsed since the Applicant's marriage that the case be referred to the Legal Department for advice as to whether her application could be granted under section 8(1) of Cap. 311, (see *exhibit 4*).

On the 14th December, 1966, a counsel of the Republic, in the office of the Attorney-General, advised the Commission that the said provision was applicable only in cases of marriage which had taken place shortly before a request for permission to retire on such a ground and, therefore, it could not be applied to the case of the Applicant (see *exhibit 5*).

On the 20th December, 1966, the Commission met and on the basis of the legal advice given to it, as aforesaid, it decided to turn down the request of the Applicant (see *exhibit 6*).

This was communicated to the Applicant on the 27th December, 1966, (see *exhibit 7*); she was informed, further, that her resignation continued to be effective.

The Applicant has filed the present recourse on the 28th January, 1967.

What is in issue is the correct interpretation of section 8(1) of Cap. 311, which provided that a female officer might be

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required or permitted to retire for the reason that "she has married or is about to marry".

The first thing to be borne in mind in this respect is that section 8(1) was a provision which existed since before the establishment of the Republic and which continued in force on the strength of Article 188 of the Constitution; therefore, it would, by virtue of paragraph 4 of such Article, have to be applied with such modification as might be necessary to bring it into accord with the Constitution.

Particularly, it had to be brought into accord with Article 22 of the Constitution, which safeguards the right to marry. As a result, it would no longer be constitutionally possible to apply section 8(1) for the purpose of retiring compulsorily a female officer merely because *of the very fact* that she was about to marry or she had married; it would, however, be still open to the Appropriate organ to retire a female officer if consequences arising because of her marriage did, in the particular circumstances of her work, interfere with the exigencies of the service; such a course would not involve an infringement of the right to marry, as such.

Correspondingly, the right of a female officer to apply for permission to retire, because she was about to marry or she had married, must be looked upon as no longer directly linked to the event of her marriage, as such, but as related to the consequences of her marriage; for example, a female officer might feel that, once she got married, she had to cease working in order to devote herself to her household duties and, thus, she might apply for permission to retire either when she was about to marry or shortly after she had done so; on the other hand, a female officer might find that she had to retire from the service some time after she had got married, in view of the fact that she had to stay and look after her children; in such a case her application to be permitted to retire would not be made shortly after her marriage but at some later date.

I am, therefore, of the view that if section 8(1) were construed in such a manner as to be brought into accord with the Constitution the notion of "has married" in section 8(1) could be taken as being wide enough to apply to the case of the Applicant.

The Commission has, thus, acted on a wrong legal basis in rejecting the request of the Applicant, because it thought,

in accordance with the legal advice given to it, that such request was not within section 8(1) of Cap. 311, as it had not been made shortly after her marriage. Its decision has, therefore, to be, and is hereby, declared as null and void and of no effect whatsoever and the matter has to be re-examined in the light of this Judgment.

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Of course the granting or refusing of permission to retire is a matter of discretion, to be exercised in the light of the particular circumstances of each case, and thus, the length of the time which elapsed between the marriage and its relevant consequences and the request for permission to retire is one of the material considerations to be taken into account when re-examining the case of this Applicant.

Before concluding this Judgment I have to consider, too, the question of whether the Commission was competent to deal at all with the relevant request of the Applicant; this point has not been contested in the proceedings before me but it is one of those matters with which the Court has to deal *ex officio* in view of the nature of its revisional jurisdiction.

It is correct that under section 8(1) of Cap. 311 the relevant competence was vested, before the coming into operation of the Constitution in 1960, in the Governor of the then British Colony of Cyprus.

Under Article 188.3 of the Constitution it is provided that any reference to the Governor, in a law continuing in force after the coming into operation of the Constitution, shall be construed as a reference "to the Council of Ministers in matters relating to exercise of executive power"; but this is to be done "unless the context otherwise requires".

In view of the express provision in Article 125.1 of the Constitution conferring on the Commission competence in relation to retirement of public officers, I am of the opinion that this was a case where the context required otherwise and in which Article 188.3(b) was consequently inapplicable; furthermore, in view of the provisions of Article 188.4, section 8(1) had to be applied modified so as to be brought into accord with the Constitution, and particularly with the said Article 125.1.

Thus, I have no doubt that the Commission was competent to deal with the request in question of the Applicant. The more so, as it is clearly to be derived from the case of *Rouhi* and *The Republic* (2 R.S.C.C. p. 84 at p. 87) that any matters

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of retirement of public officers requiring specific decisions are matters within the competence of the Commission—(and that case was followed in *Ieromonachou* and *The Republic*, 4 R.S.C.C., p. 82).

It may be that if the Commission were to decide, after an examination of the individual circumstances of Applicant's case, that her request for permission to retire because of her marriage should be granted, then the relevant administrative action would still have to be completed through the Council of Ministers considering the matter from the wider aspect of policy involved therein (in view of Article 54 of the Constitution). There might well be cases where, in respect of a matter affecting a public officer, the Commission has first to reach a decision, to the extent to which the particular circumstances of such matter are involved, but its decision constitutes only the initial stage of a composite administrative action to be completed by an act or decision of another organ also competent in the matter from another aspect; I leave, however, this question entirely open in this Judgment.

In the result this recourse succeeds, as already indicated; there shall be no order as to costs, in view of the fact that the Commission acted in this case with all due prudence and good faith.

Sub judice decision annulled.
No order as to costs.