

[VASSILIADES, P., JOSEPHIDES, STAVRINIDES,
HADJIANASTASSIOU, JJ.]

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STAVROULLA
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v.
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STAVROULLA LYSSIOTOU,

Appellant (Interested Party),

and

1. KYRIAKOS G. PAPASAVVA

Respondent (Applicant),

2. THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent (Respondent).

(Revisional Jurisdiction Appeal No. 28).

Public officers—Retirement—Compulsory retirement of public officers on reaching the age of (compulsory) retirement—Section 8(1) of the Pensions Law, Cap. 311—Competence to decide correct date of birth of a public officer for the purpose of determining the exact date of compulsory retirement under the section—The competent organ in the matter is the Council of Ministers in view of its residual executive powers under Article 54(a) and (d) of the Constitution—The Public Service Commission has no competence in this specific matter—The word to “retire” public officers in Article 125.1 of the Constitution does not confer any competence on the Public Service Commission to decide the date of birth of a public officer, even if the ascertainment of such date is necessary for the determination of the date of compulsory retirement of a public officer—Pensions Law, Cap. 311, sections 2(1), 3(1), 6(a), 7 and 8(1)—The Pensions (Amendment) Law, 1967, (Law No. 9 of 1967) sections 6 and 7—Article 188.3(b) and 4 of the Constitution.

Public Service Commission—Creature of the Constitution endowed with such powers and competence as are expressly conferred on it—Residual executive power over public service vests in the Council of Ministers—Article 54(a) and (d) of the Constitution—See, also, above under Public Officers.

Council of Ministers—Residual executive powers—Competence—Article 54(a) and (d) of the Constitution—See above.

Retirement—Of public officers—Compulsory retirement—As-

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certainment of the date of birth of a public officer for the purpose of determining the date of compulsory retirement under section 8(1) of the Pensions Law, Cap. 311—Competence—See above.

Compulsory retirement—Of public officers—Compulsory retirement on attaining the age of compulsory retirement—Competence to ascertain the date of birth for the purpose of determining the exact date of such retirement—Council of Ministers (not the Public Service Commission) is the competent organ in the matter—See above.

Constitutional Law—Public Service Commission—Council of Ministers—Competence—Retirement of public officers—Express powers—Residual powers—Articles 54(a) and (d) and 125.1 of the Constitution—See above.

This is an appeal by the Interested Party (Mrs. Lyssiottou) against the decision of a single Judge of this Court (Triantafyllides, J.) granting the recourse of the first Respondent (hereinafter referred to as “the Applicant”) and declaring that the Public Service Commission (2nd Respondent) wrongly omitted to examine the question of the correct date of the birth of the Interested Party on the application of the Applicant (See this decision in (1967) 3 C.L.R. 111).

The main question which falls to be determined is whether the Public Service Commission has competence under the provisions of Article 125.1 of the Constitution to decide the question of the correct date of the birth of the Interested Party for the purpose of the determination of the date of her retirement on attaining the age of compulsory retirement (*viz.* 55 years), under the provisions of section 8(1) of the Pensions Law, Cap. 311.

The Interested Party held the post of Senior Dental Officer in the Government Service, the Applicant was a Dental Officer, 1st Grade, and he together with another Dental Officer were the most senior among the Dental Officers in their grade in the Government Service. The Applicant possessed the qualifications for promotion to the post of Senior Dental Officer held by the Interested Party at the material time.

The Interested Party was first appointed to the Government Service on the 1st May, 1935. In an official certifi-

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cate of birth produced by her at the time it was certified that she was born on the 26th December, 1911. Subsequently, on the 7th January, 1943, in an application for permanent appointment, she produced again an official certificate of birth issued by the Commissioner of Paphos to the effect that she was born on the aforesaid date (i.e. 26th December, 1911). By a letter dated the 10th November, 1959, addressed to the then Establishment Secretary of the Colony of Cyprus, who was responsible for personnel matters under the Colonial Government, the Interested Party challenged the correctness of the date of her birth alleging that she was born on 26th December 1912 (and not on the 26th December 1911). The Establishment Secretary dealt with the matter and decided that the 26th December, 1912, should be accepted as the date of the Interested Party's birth and informed her accordingly by letter dated the 19th April, 1960. The result of this alteration of the date of the birth of the Interested Party was that the date of her compulsory retirement from the public service under the provisions of section 8 of the Pensions Law, Cap. 311, was moved to the 26th December, 1967, instead of the 26th December, 1966, the age of compulsory retirement being, at the material time, under the Pensions Law, the age of 55 years.

On the 10th January, 1966 the Applicant addressed a letter to the Acting Minister of Health complaining that the date of birth of the Interested Party had been altered wrongly so as to make her appear younger than what she actually was; and requesting a re-examination of the matter for the protection of the interests of other Dental Officers. The Acting Minister of Health, after obtaining legal advice from the Attorney-General of the Republic, placed on the 24th March 1966, the matter before the Public Service Commission as the "appropriate Authority for acting in the matter". The Commission met on the 9th of June, 1966, and, after considering the matter and giving its reasons in their minutes, decided "not to deal with the matter and let anybody affected to have a recourse to the Court." The Applicant was duly informed of this decision and filed a recourse against it, complaining that the date of birth of the Interested Party was wrongly accepted as being the 26th December, 1912, and that in consequence of this she may stay in the Service for an extra year, "prejudicing

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thereby the rights of promotion or otherwise of the Applicant”.

The learned trial Judge found that the Applicant has a legitimate interest under Article 146.2 of the Constitution to make a recourse and held that “decisions relating to retirement of public officers—other than administrative action implementing retirement and taken automatically by operation of law—are among the duties of the Public Service Commission (see *Ali Rouhi and the Republic*, 2 R.S.C.C. 84, at p. 87); consequently the examination of the matter of the correct date of birth of an officer, in relation to his or her retirement, is part of the Commission’s duties (see *Ieromonachos and the Republic*, 4 R.S.C.C. 82); that the Commission was competent to deal with the matter in issue; and that their refusal to deal with the matter raised by the letter dated the 10th January, 1966, (*supra*), amounted to a wrongful omission on their part to examine the question of the correct date of the birth of the Interested Party.

It is against this decision that the present appeal is taken by Mrs. Lyssioutou the Interested Party.

Article 125.1 of the Constitution provides:

“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 appoint . . . transfer, retire and exercise disciplinary control over, including dismissal or removal from office of, public officers”.

In allowing the appeal the Court:-

Held, per Josephides, J. (Vassiliades P. and Stavrini-des J., concurring, Hadjianastassiou J., dissenting) :-

(1). It is common ground that for the matter referred to the Public Service Commission to be within its competence it must come within the ambit of the provisions of Article 125.1 of the Constitution (*supra*). It should be borne in mind that the Commission is a creature of the Constitution with the limited powers which are expressly conferred on it under paragraph 1, of Article 125; and, unless the power or competence is expressly conferred on

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the Commission in Article 125.1 (*supra*), the competent organ to exercise any residual executive power in respect of all matters, concerning the Public Service in Cyprus, is, under the provisions of Article 54(a) and (d) of the Constitution, the Council of Ministers: See also *Papapetrou and The Republic*, 2 R.S.C.C. 61, at pp. 62 and 65.

(2)(a) Consequently, the question before us is one of construction of the provisions under Article 125.1 of the Constitution.

(b) We are not called upon to give a full exposition of the powers of the Public Service Commission with regard to the expression "to retire" therein, but simply to decide whether the matter referred to them comes within the ambit of that term.

(c) And as the question of the date of the birth of the Interested Party raised in these proceedings is solely in connection with the determination of the date of her compulsory retirement from the Public Service on attaining the age of retirement (55 years of age) it is necessary for us to examine the legislative provisions applicable to the retirement of public officers on reaching the age of retirement.

(d) The Pensions Law, Cap. 311, before its recent amendment in April, 1967 (effected after the delivery in February, 1967 of the Judgment at first instance in this case, but before the hearing of this appeal) by Laws Nos. 9 of 1967 and 18 of 1967, conferred all the powers to declare an office pensionable, to grant pensions and gratuities, to require or permit an officer to retire, or to allow an officer to remain in the service after attaining the age of 55 years, on the Governor-in-Council of the Colony of Cyprus (now on the Council of Ministers by virtue of paragraph 3(b) of Article 188 of the Constitution). See sections 2(1), 3(1), 6(a) and 8(1) of the Pensions Law Cap. 311, the material parts of which are set out post in the judgment.

(e) It is significant to note that the new Pensions (Amendment) Law, 1967 (Law No. 9 of 1967) which by sections 6 and 7 repeals and re-enacts sections 6(a) and 8 of the principal Pensions Law, Cap. 311 (*supra*) confers expressly the power or competence to *require* or permit

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an officer to *retire* from the service on the Council of Ministers, and *not* on the Public Service Commission; (the text of the new provisions is quoted *post* in the judgment).

(3) It should be clarified that we are not here concerned with the compulsory retirement of a public officer following disciplinary proceedings, which would no doubt be within the competence of the Commission; nor are we concerned with the retirement of a public officer “in the public interest”, under the provisions of section 7 of the Pensions Law, Cap. 311, which would appear to fall within the exclusive competence of the Council of Ministers (cf. the cases of the termination of the services of three Court stenographers referred to in the case *Papaleontiou and the Republic*, (1967) 3 C.L.R. 624).

(4) Once it is accepted—as it is accepted by the Court in the *Rouhi* case, *supra*—that retirement on reaching the age limit is automatic by operation of law and does not require the taking of a decision by the Commission, and that such Commission has no competence under the provisions of Article 125.1 of the Constitution (*supra*) to take a decision to “retire” a public officer on reaching the age of compulsory retirement, how can it have any competence to decide a matter incidental thereto, that is, the ascertainment of the correct age of birth of an officer for the purpose of the determination of his date of retirement, in the absence of any express provision conferring such competence on the Commission. As already observed (*supra*) the Public Service Commission being a creature of the Constitution, has, no competence to deal with a certain matter requiring the taking of a specific decision, unless expressly empowered to do so.

(5) Under the provisions of section 3(1), 6(a) and 8(1), of the Pensions Law Cap. 311, the Council of Ministers in the exercise of its executive powers, as successor of the former Governor of the Colony of Cyprus, has the exclusive competence to grant pensions on the attainment of a public officer of the age of compulsory retirement. Retirement on reaching the age of 55 years is compulsory by operation of law and no decision of the Public Service Commission is necessary. But in order that the Council of Ministers may grant such pension it must be satisfied that the age of compulsory retirement has been attained by the public

officer. Consequently the determination of the date of retirement of an officer and, incidentally, the ascertainment of the date of his birth on which the date of his retirement depends, lies within the competence of the Council of Ministers and not within that of the Public Service Commission. *Ieromonachos and the Republic*, 4 R.S.C.C. 82 distinguished on the ground that the question whether the Commission in fact possessed such competence does not appear to have been directly in issue in that case.

(6) In the result, the matter referred to the Public Service Commission for examination and decision was not within their competence, as laid down in Article 125.1 of the Constitution, and the Commission rightly refused to deal with it.

Appeal allowed. Decision of the learned trial Judge set aside. No order as to costs here and at the trial.

Held, per Hadjianastassiou, J. (in his dissenting judgment) :

(1)(a). The material words in paragraph 1 of Article 125 of the Constitution (*supra*) are to the effect that the Public Service Commission has competence, *inter alia*, to "retire and exercise disciplinary control over, including dismissal or removal of, public officers".

(b) Those words have to be expounded according to their manifest or express intention (see *Attorney-General for Canada v. Hallet and Carey L.D. and Another* [1952] A.C. 427 at p. 449 per Lord Radcliffe). If so, then, in my view, the word, "retire" in paragraph 1 (*supra*) ought to be given the express meaning which the Constitutional Drafters intended it to have, that is to say, that the Public Service Commission has competence, in a proper case, to take a decision to retire public officers from office.

(2)(a) If the word "retire" was intended to be read and applied with the words "and exercise disciplinary control" over public officers in the context of disciplinary proceedings only, then in my view the word would be superfluous. That it is not so, it is evident from the fact that the word "retire" is followed by the word "and" which is of a conjunctive nature.

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(b) It is thus clear that the Public Service Commission has competence to retire public officers from office, in those cases necessitating the taking of a specific decision; and quite apart from those cases where the retirement of a public officer becomes automatic by operation of law, under the provisions of the Pensions Law, Cap. 311 (See *Rouhi* case, *supra*).

(c) Furthermore, the words "exercise disciplinary control over" following the word "and" indicate to my mind that the Commission is vested with a further power to dismiss or remove from office in a proper case public officers; and those words do not refer in my opinion to the word "retire".

(3)(a) True, paragraph 3(b) of Article 188 of the Constitution provides 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 the exercise of executive power; but this is to be done, unless "the context of the law otherwise requires". In view of the express provision in Article 125.1 of the Constitution (*supra*), I am of the opinion that a competence is conferred thereby on the Public Service Commission in relation to the retirement of public officers.

(b) I am, therefore, of the view that section 8(1) of the Pensions Law, Cap. 311 has to be applied to the present case so modified as to be brought within paragraph 1 of Article 125 of the Constitution, pursuant to the provisions in paragraph 4 of Article 188 of the Constitution.

(4) For all the above reasons I would dismiss the appeal.

Cases referred to:

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

Ieromonachos and the Republic, 4 R.S.C.C. 82;

Papaleontiou and The Republic, (1967) 3 C.L.R. 624;

Papapetrou and The Republic, 2 R.S.C.C. 61, at pp. 62 and 65;

Attorney-General for Canada v. Hallet and Carey LD. and Another [1952] A.C. 427 at p. 449, per Lord Radcliffe;

Ahmet Nedjati and The Republic, 2 R.S.C.C. 78, at p. 82;

Chrysanthos Makrides and The Republic, 2 R.S.C.C. 8
at p. 12;

Andreas Markoullides and The Republic, 3 R.S.C.C. 30
at p. 33.

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Appeal

Appeal by the Interested Party against the decision of a Judge of the Supreme Court of Cyprus (Triantafyllides, J.) given on the 8th February, 1967 in case No. 185/66, whereby it was decided that the Public Service Commission wrongly omitted to examine the question of the correct date of birth of the Interested Party on the application of the first Respondent in this appeal.

A.P. Anastasiades, for the Appellant.

L. Demetriades, for the first Respondent.

The second Respondent was not represented.

Cur. adv. vult.

The following Judgments were read:

VASSILIADES, P.: The first Judgment in this Appeal will be delivered by Josephides, J.

JOSEPHIDES, J.: This is an appeal by the interested party against the decision* of a single Judge of this Court declaring that the Public Service Commission wrongly omitted to examine the question of the correct date of birth of the interested party, on the application of the first Respondent in this appeal (to whom I shall refer as "the Applicant"). The interested party appealed to this Court upon various grounds but the view which I may take upon one point of construction may render it unnecessary to consider any of the other grounds.

The first question which falls to be determined is whether the Public Service Commission has competence, under the provisions of Article 125.1 of the Constitution, to decide

*Note: Decision reported in (1967) 3 C.L.R. 111.

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the question of the correct date of birth of the interested party for the purpose of the determination of the date of her retirement on attaining the age of compulsory retirement, under the provisions of section 8(1) of the Pensions Law, Cap. 311.

The facts which gave rise to the present case, which are not actually in dispute are the following:

The interested party held the post of Senior Dental Officer in the Government Service, the Applicant was a Dental Officer, 1st Grade, and he together with another Dental Officer were the most senior among the Dental Officers in their grade in the Government Service. The Applicant possessed the qualifications for promotion to the post of Senior Dental Officer held by the interested party at the material time. The Applicant was a member and the Secretary of the Association of Government Dental Officers.

The interested party was first appointed to the Government Service on the 1st May, 1935. In an official certificate of birth produced by her at the time it was certified that she was born on the 26th December, 1911. Subsequently, on the 7th January, 1943, in an application for permanent appointment, she declared that she was born on the aforesaid date and this was supported by an official certificate of birth issued by the Commissioner of Paphos. By a letter dated the 10th November, 1959, addressed to the then Establishment Secretary of the Colony of Cyprus, who was responsible for personnel matters under the Colonial Government, the interested party challenged the correctness of the date of her birth.

According to the opposition filed by the Respondent Public Service Commission, "after a careful examination of the whole matter which included a perusal of the relevant registers of births, the Establishment Secretary decided that the 26th December, 1912, should be accepted as the date of Mrs. Lyssiotou's birth for all official purposes"; and she was so informed by a letter addressed to her on the 19th April, 1960, by the Establishment Secretary of the Government of Cyprus. The result of this alteration in the date of birth of the interested party was that her date of compulsory retirement from the Public Service under the provisions of section 8 of the Pensions Law, Cap. 311, was moved to the 26th December, 1967, instead of the 26th December, 1966.

The compulsory age of retirement under Cap. 311 was, at the material time, the age of 55 years.

On the 10th January, 1966, the Applicant, in his capacity as the Secretary of the Association of Government Dental Officers, addressed a letter to the Acting Minister of Health complaining that the date of birth of the interested party, as officially recorded in relation to her service, had been altered wrongly so as to make her appear younger than what she actually was; and requesting a re-examination of the matter for the protection of the interests of other Dental Officers.

On the 24th March, 1966, the Acting Minister of Health, after obtaining legal advice from the Attorney-General of the Republic, placed the matter before the Public Service Commission as the "appropriate Authority for acting in the matter". On the 13th May, 1966, the then Acting Minister of Health addressed a letter to the Commission enquiring as to whether the Commission was prepared to examine the matter or not. The Commission met on the 9th June, 1966, and, after considering the matter and giving its reasons in their minutes, decided "not to deal with the matter and let anybody affected to have a recourse to the Court". On the 21st June, 1966, the Acting Minister of Health addressed a letter to the Association of Government Dental Officers, in reply to their letter of the 10th January, 1966, informing them of the action taken and the decision of the Public Service Commission. Thereupon, the Applicant filed a recourse against the decision of the Commission.

The Applicant bases his complaint on the allegation that the date of birth of the interested party was wrongly accepted as the 26th December, 1912, and that in consequence of this she may stay in the Service for an extra year "prejudicing thereby the rights of promotion or otherwise of the Applicant". The learned trial Judge found that the Applicant is entitled under the provisions of Article 146.2 of the Constitution to make a recourse, and went on to examine whether there existed in this case an omission on the part of the Public Service Commission to deal with the question of the correct date of birth of the interested party.

The learned trial Judge, relying on the provisions of Article 125.1 of the Constitution, held that "decisions relating to retirement of public officers — other than administrative

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action implementing retirement and taken automatically by operation of law — are among the duties of the Commission (see *Ali Rouhi and The Republic*, 2 R.S.C.C. p. 84 at p. 87); consequently the examination of the matter of the correct date of birth of an officer, in relation to his or her retirement, is part of the Commission's duties (see *Ieromonachos and The Republic*, 4 R.S.C.C. p. 82)"; that the Commission was competent to deal with the matter in issue; and that the Commission's refusal to deal with the matter raised by the letter dated the 10th January, 1966, amounted to a wrongful omission on their part to examine the question of the correct date of birth of the interested party (the judgment of the trial Judge is fully reported in (1967) 3 C.L.R. 111).

The question for determination by us is whether the matter referred to the Public Service Commission was within its competence. It is common ground that for this matter to be within its competence it must come within the ambit of the provisions of Article 125.1 of the Constitution which provides:

"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 appoint transfer, retire and exercise disciplinary control over, including dismissal or removal from office of, public officers".

Consequently, the question before us is one of construction of the aforesaid provisions. We are not called upon here to give a full exposition of the powers of the Public Service Commission with regard to the expression "to retire", but simply to decide whether the matter referred to them comes within the ambit of that term. As the question of the date of birth of the interested party raised in these proceedings is solely in connection with the determination of the date of her compulsory retirement from the Public Service on attaining the age of retirement (55 years of age), it is necessary for us to examine what are the legislative provisions applicable to the retirement of public officers on reaching the age of retirement.

It should, perhaps, be clarified that we are not here concerned with the compulsory retirement of a public officer

following disciplinary proceedings, which would no doubt be within the competence of the Commission; nor are we concerned with the retirement of a public officer "in the public interest", under the provisions of section 7 of the Pensions Law, Cap. 311, which would appear to fall within the exclusive competence of the Council of Ministers (cf. the cases of the termination of the services of three Court stenographers referred to in the case of *Papaleontiou and The Republic*, (1967) 3 C.L.R. 624).

In considering the question of the competence of the Public Service Commission to examine and take a decision with regard to the question of the correct date of birth of the interested party for the purpose of the determination of the date of her retirement by operation of law (Cap. 311), it should be borne in mind that the Commission is a creature of the Constitution with the limited powers which are expressly conferred on it under paragraph 1, of Article 125, "save where other express provision is made in this Constitution", and "subject to the provisions of any law", with respect to any matter set out in that paragraph; and, unless the power or competence is expressly conferred on the Commission in Article 125.1; subject to the aforesaid restrictions, the competent organ to exercise any residual executive power in respect of all matters, concerning the Public Service in Cyprus is, under the provisions of Article 54, paragraphs (a) and (d), the Council of Ministers: see also *Papapetrou and The Republic (Public Service Commission)*, 2 R.S.C.C. 61, 62 and 65.

The legislative provisions regarding the retirement of Public Officers are to be found in the Pensions Law, Cap. 311, as amended, which lays down a comprehensive pension scheme for the Public Service. After the delivery of the judgment at first instance in this case in February 1967, and before the hearing of this appeal, the Pensions Law, Cap. 311, was amended with effect from the 1st April, 1967, by Law 9 of 1967 (and subsequently by Law 18 of 1967). I shall refer to those amendments later in this judgment.

The Pensions Law, Cap. 311, before its recent amendment in April 1967, conferred all the powers to declare an office pensionable, to grant pensions and gratuities, to require or permit an officer to retire, or to allow an officer to remain in the Service after attaining the age of 55 years, on the Governor or the Governor-in-Council of the Colony of

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Cyprus. Since Independence Day those provisions have to be read subject to the provisions of the Constitution and Article 188 thereof. Paragraph 3(b), of Article 188, provides that, unless the context of a pre-constitution law otherwise requires, any reference to the "Governor or the Governor-in-Council" in such law shall be construed as a reference to the "Council of Ministers in matters relating to exercise of executive power".

Under the provisions of section 2(1) of Cap. 311 the Governor-in-Council could declare an office to be a pensionable office. That power has, since the establishment of the Republic, been exercised by the Council of Ministers on nine different occasions, in respect of some 200 offices: see Orders published in the Gazette beginning with Public Instrument No. 139/1961 and ending with Public Instrument 1/1968.

Under the provisions of section 3(1), pensions and gratuities are granted by the "Governor" in accordance with the Regulations contained in the Schedule to the Law, and such pension or gratuity is computed in accordance with the provisions in force at the actual date of an officer's retirement. There again the competent organ entrusted with this duty and power is now the Council of Ministers.

Section 6 and sections 6(a) and 8(1) of Cap. 311, prior to its amendment, read as follows:

"6. No pension, gratuity or other allowance shall be granted under this Law to any officer except on his retirement from the public service in one of the following cases:-

"(a) on or after attaining the age of fifty-five years, or in any case in which the Governor, under the provisions of this Law, may require or permit an officer to retire on or after attaining the age of fifty years, on being required or permitted so to retire;

.....
"8.(1) It shall be lawful for the Governor to require or permit any officer to retire from the service of Cyprus at any time after he has attained the age of fifty years and also in the case of a female officer to require or permit such officer to retire for the reason that she has married or is about to marry, and retirement shall be

compulsory for every officer on attaining the age of fifty-five years:

“Provided that-

“(a)

“(b) the Governor may allow any officer to remain in the service of Cyprus for such time, after attaining the age of fifty-five years, as to the Governor may seem fit.”

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These provisions show that the retirement of a public officer is compulsory on attaining the age of fifty-five years and that on such retirement the decision to grant pension is taken by the Council of Ministers in exercise of its executive powers, replacing the former Governor of the Colony of Cyprus.

In the present case we are not concerned with the exercise of the power of the former Colonial Governor “to require or permit any officer to retire from the service”, under the provisions of section 8(1) of Cap. 311 (prior to its amendment in 1967), but only with the case of an officer whose retirement is compulsory on attaining the age of fifty-five years by operation of law which does not require the taking of any decision by any organ whatsoever. Nevertheless, it is significant to note that the new Law enacted in 1967 (Law 9 of 1967, sections 6 and 7, repealing and re-enacting sections 6(a) and 8 of the principal Law, Cap. 311), confers expressly the power or competence to *require* or *permit* an officer to *retire* from the service on the Council of Ministers, and *not* on the Public Service Commission (the text of the new provisions is quoted below); and one should not lose sight of the fact that the provisions of paragraph 1, of Article 125, of the Constitution conferring, *inter alia*, the power on the Public Service Commission to “retire” a public officer, are made expressly “subject to the provisions of any law” with respect to any matter set out in that paragraph. But, as already observed, in this case we are not concerned with the power of the competent organ to take a decision to retire a public officer, but with that provision in section 8 of Cap. 311, which lays down expressly that retirement of a public officer is “compulsory” on attaining the age of fifty-five years, by operation of law and without the taking of a decision by any organ whatsoever. The aforesaid sections 6 and 7 of the new Pensions (Amendment) Law 9 of 1967 read as follows:-

«6. Τὸ ἄρθρον 6 τοῦ βασικοῦ Νόμου διὰ τοῦ παρόντος

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τροποποιείται ως ακολούθως :

(α) διὰ τῆς ἀντικαταστάσεως τῆς παραγράφου (α) διὰ τῆς ἀκολουθοῦ παραγράφου :

«(α) ἐπὶ τῇ συμπληρώσει τῆς ἡλικίας ἀναγκαστικῆς ἀφυπηρητήσεως ἢ καθ' οἷονδῆποτε μεταγενέστερον χρόνον ἢ ἐν οἷονδῆποτε περιπτώσει καθ' ἣν τὸ Ὑπουργικὸν Συμβούλιον δυνάμει τῶν διατάξεων τοῦ παρόντος Νόμου ἤθελεν ἀπαιτήσῃ παρὰ ὑπαλλήλου ἢ ἐπιτρέψῃ εἰς αὐτὸν νὰ ἀφυπηρητήσῃ ἐπὶ τῇ συμπληρώσει τῆς ἡλικίας τῶν πεντήκοντα πέντε ἐτῶν, ἢ ἐν περιπτώσει ἀστυνομικοῦ τῶν πεντήκοντα ἐτῶν, ἢ καθ' οἷονδῆποτε μεταγενέστερον χρόνον, ὅταν ἀπαιτηθῇ παρ' αὐτοῦ ἢ ἐπιτραπῇ εἰς αὐτὸν οὕτω νὰ ἀφυπηρητήσῃ».

7. Τὸ ἄρθρον 8 τοῦ βασικοῦ Νόμου διὰ τοῦ παρόντος ἀντικαθίσταται διὰ τοῦ ἀκολουθοῦ ἄρθρου :

«Ἡλικία 8.-(1) Τηρουμένων τῶν διατάξεων παντὸς ἀφυπηρητήσεως. νόμου καὶ τοῦ ἐδαφίου (2), ἡ ἡλικία ἀναγκαστικῆς ἀφυπηρητήσεως ἀπάντων τῶν ὑπαλλήλων εἶναι ἡ τῶν ἐξήκοντα ἐτῶν :

Νοεῖται ὅτι τὸ Ὑπουργικὸν Συμβούλιον δύναται νὰ ἀπαιτήσῃ παρὰ ὑπαλλήλου ἢ νὰ ἐπιτρέψῃ εἰς αὐτὸν ὅπως ἀφυπηρητήσῃ ἐπὶ τῇ συμπληρώσει τῆς ἡλικίας τῶν πεντήκοντα πέντε ἐτῶν ἢ καθ' οἷονδῆποτε μεταγενέστερον χρόνον, ὡσαύτως δὲ ἐν περιπτώσει γυναικὸς ὑπαλλήλου νὰ ἐπιτρέψῃ εἰς αὐτὴν ὅπως ἀφυπηρητήσῃ λόγῳ γάμου ἢ ἐπικειμένου γάμου ἢ τεκνογονίας αὐτῆς.

.....
(4) Ἀνεξαρτήτως τῶν διατάξεων τοῦ παρόντος ἄρθρου τὸ Ὑπουργικὸν Συμβούλιον δύναται, ἐὰν θεωρῇ τοῦτο ἐπιθυμητὸν πρὸς τὸ δημόσιον συμφέρον νὰ ἐπιτρέψῃ εἰς ὑπάλληλον ὅπως παραμείνῃ ἐν τῇ ὑπηρεσίᾳ μετὰ τὴν ἡμερομηνίαν καθ' ἣν συμπληροῦται ἡ ἡλικία ἀναγκαστικῆς ἀφυπηρητήσεως αὐτοῦ ἐπὶ τοσοῦτο χρονικὸν διάστημα ὅσον τὸν Συμβούλιον ἤθελεν ὀρίσει».

In *Mehmed Ali Rouhi and The Republic (Public Service Commission)*, 2 R.S.C.C. 84, the Supreme Constitutional

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Court held that the retirement of a public officer from the Public Service on attaining retiring age was, by operation of law, automatic not necessitating the taking of a decision; that the taking of a decision was an essential ingredient of the notion of competence of the Public Service Commission as defined in Article 125.1; that a provision of law not requiring the taking of a decision did not involve the exercise of competence; and that the provisions of the Pensions Law, Cap. 311, were not inconsistent with the competence of the Public Service Commission under Article 125.1 and, coming within the expression "subject to the provisions of any law" in Article 125, continued in force without any modification under Article 188. The following is the relevant extract from the decision of the Court in that case (at page 87A):-

"In the opinion of the Court when a public officer reaches the age of retirement the appropriate administrative action is taken by operation of law without the taking of a decision in the particular case.

Paragraph 1 of Article 125 of the Constitution is a provision defining the competence of the Public Service Commission. The taking of a decision is an essential ingredient of the notion of competence. A provision of a law not requiring the taking of a decision does not involve the exercise of competence. It follows, therefore, that provisions such as those contained in the Pensions Law, CAP. 311, making retirement automatic by operation of law on reaching a specified age limit are not inconsistent with the competence of the Public Service Commission to deal with matters relating to retirement and requiring the taking of a specific decision. In the circumstances the said provisions of CAP. 311 continue in force, without any modification in this respect under Article 188 of the constitution, and they, therefore, come within the expression 'subject to the provisions of any law' in paragraph 1 of Article 125".

In the *Rouhi* case, on the date of the decision of the Public Service Commission not to alter the date of the Applicant's birth, his retirement (on the basis that he had been allegedly born in the year 1900) had already taken effect. That is, his retirement took effect on the 1st January, 1961, and the Commission took its decision on the 14th March, 1961, although the Applicant had raised the question of the correct

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date of his birth on the 21st December, 1960, in an application addressed to the Minister under whom his department was placed; and his application had been referred by the Ministry to the Public Service Commission "for any action they may deem appropriate" under the provisions of Article 125, as the Applicant was informed by a letter dated the 30th December, 1960. In fact, the Applicant himself wrote to the Public Service Commission on the 14th February, 1961, forwarding a copy of the Ministry's letter requesting the Commission to consider his case at an early date. Meantime the Chief Establishment Officer by a letter dated the 27th December, 1960, informed the Applicant (Rouhi) that the Council of Ministers had granted him a pension at the rate of £445.184 mils per annum with effect from the 1st January, 1961, and a gratuity of £1854.932 mils. This was done under the provisions of the Pensions Law, Cap. 311. His retirement with effect from the 1st January, 1961, which was published in the Official Gazette on the 11th January, 1961, took place by way of administrative action by the Chief Establishment Officer pursuant to the provisions of the Pensions Law, Cap. 311, on the ground of age limit. Some of these facts do not appear in the report of the *Rouhi* case but I have obtained them from the original court record.

In those circumstances it was held that the decision of the Public Service Commission (taken in March 1961) not to alter the date of birth and to reject a new birth certificate of the Applicant, was taken in a matter in which it did not have competence, and amounted to excess of power, as the Commission on the date of its decision "did not have competence concerning the aforesaid administrative action taken in relation to retirement by operation of Law"; and that the rejection by the Commission of the birth certificate did not and could not have affected any existing legitimate interest of the Applicant within the ambit of Article 146 (see pages 85D and 88D-F of the *Rouhi* report).

If the *ratio decidendi* of the *Rouhi* case is that the Public Service Commission would have had competence if the retirement of the Applicant had not already taken place by operation of law (on the 1st January, 1961), I would not, with respect, be prepared to follow that decision. Once it is accepted — as it is accepted by the Court in the *Rouhi* case — that retirement on reaching the age limit is automatic by operation of law and does not require the taking of a deci-

sion by the Commission, and that such Commission has no competence under the provisions of Article 125.1 to take a decision to "retire" a public officer on reaching the age of compulsory retirement, how can it have any competence to decide a matter incidental thereto, that is, the ascertainment of the correct age of birth of an officer for the purpose of the determination of his date of retirement, in the absence of any express statutory provision conferring such competence on the Commission.

As already observed, the Public Service Commission being a creature of the Constitution can only have and exercise the powers expressly conferred on it under the Constitution and it cannot have any other powers. Unless expressly empowered by a statutory provision to deal with a certain matter requiring the taking of a specific decision, the Public Service Commission has no competence to do so and, if such matter relates to the exercise of executive power, then the only competent organ to exercise such power and take a decision in the matter is the Council of Ministers within its residual executive powers.

The case of *Ieromonachos and The Republic (Public Service Commission)*, 4 R.S.C.C. 82, which was also relied upon by the trial Judge in the present case, was decided by the Supreme Constitutional Court on the assumption that the Public Service Commission had competence to examine and decide the question of the correct date of birth of a public officer for the purpose of his compulsory retirement under section 8(1) of Cap. 311. The question whether the Commission in fact possessed such competence does not appear to have been directly in issue in that case.

Perhaps reference should also be made to a provision in the Public Service Law, No. 33 of 1967, which was enacted on the 30th June, 1967, after the hearing of this appeal, although such provision cannot be said to be conclusive either way. Section 52 of that law provides that the age of a public officer shall be proved by such evidence as the Council of Ministers may prescribe; but it would appear that this has not yet been done. Section 52 reads as follows:-

«52. 'Η ηλικία δημοσίου υπαλλήλου αποδεικνύεται διά τοιούτων αποδεικτικῶν στοιχείων οἷα τὸ Ὑπουργικὸν Συμβούλιον ἤθελε καθορίσει»

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Having considered all these matters I can now sum up and conclude. The power possessed by the Public Service Commission under Article 125.1 is, *inter alia*, to “retire” public officers, and the question which falls to be determined by this Court is whether that expression may be construed to include the duty and competence to decide the correct date of birth of a public officer for the purpose of the determination of the date of his retirement under the provisions of sections 3(1), 6(a) and 8(1) of the Pensions Law, Cap. 311, which provide for his compulsory retirement on attaining the age of fifty-five years (or as the case may be) by operation of law, and the granting of a pension to him.

Under the provisions of section 3(1), 6(a) and 8(1) of the Pensions Law, Cap. 311, the Council of Ministers, in exercise of its executive powers, as successor of the former Governor of the Colony of Cyprus, is the only organ charged with the duty and power of granting pensions on the attainment of a public officer of the age of compulsory retirement; and it has exclusive competence to take such a decision to the exclusion of any other organ of the State. Retirement on reaching the age of 55 years is compulsory by operation of law and no decision of the Public Service Commission is necessary. In order that the Council of Ministers may grant such pension it must be satisfied that the age of compulsory retirement has been attained by the public officer, that is, that the requirements of the law are fulfilled. Consequently, the determination of the date of retirement of an officer and, incidentally, the ascertainment of the date of his birth on which the date of his retirement depends, lies within the competence of the Council of Ministers and not within that of the Public Service Commission.

I would, however, leave the question open as regards the mode of proof of such date of birth, e.g. whether on the basis of an official birth certificate issued under the provisions of the Births and Deaths Registration Law, Cap. 275, or, in the absence of such a certificate, on the basis of a declaration made by a competent court as to the correct date of birth of such officer, or otherwise, having regard to the statutory provisions in force at the time, as such question is not necessary to be decided for the purposes of the present appeal.

For the reasons I have endeavoured to explain in this judgment I am of the view that the matter referred to the

Public Service Commission for examination and decision was not within their competence, as laid down in Article 125.1 of the Constitution, and the Commission rightly refused to deal with it.

In the result, I would allow the appeal and set aside the decision of the learned trial Judge.

VASSILIADES, P.: I agree. I had the advantage of reading in advance the judgment of Mr. Justice Josephides and I concur, but I would like to add this. What falls to be decided in this recourse is whether the Public Service Commission had the competence, and therefore the duty, to embark on an enquiry for the purpose of finding and declaring the age, and incidentally the date of birth, of the interested party in connection with her retirement from the Public Service.

It is common ground that the interested party was born in Cyprus at a time when there was in force a statute, the Births and Deaths Registration Law, now Cap. 275, in some form or other. Under the provisions of the statute, the interested party's birth had to be entered and recorded in the official Register of Births. It is common ground in this case that there is an entry in the official Register concerning the party in question. It is said that an official certificate of birth, based on such entry, was used in connection with her appointment in the Public Service. It is also said that at some later stage an Officer of the Colonial Government of Cyprus issued certain instructions regarding the interested party's date of birth, the correctness or validity of which are now being challenged, in connection with her retirement. I take the view that Article 125 of the Constitution was neither intended to, nor does it in fact, have the effect of conferring on the Public Service Commission the competence to decide whether the entry concerning the interested party's date of birth in the official Register is correct; or whether the instructions of the Colonial official in question are valid.

I think the Public Service Commission were right in declining to embark on such enquiry. This is sufficient, in my opinion, to decide the present recourse. It does not fall to be decided in these proceedings who has the competence under the law to deal with the matter. I would allow the appeal and decide the recourse accordingly.

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STAVRINIDES, J.: I agree with the judgment of Mr. Justice Josephides and I have nothing to add.

HADJIANASTASSIOU, J.: The decision of this appeal appears to me to involve a question with regard to the true construction of paragraph 1 of Article 125 of our Constitution. In this case the main contention of counsel for the appellant was that the Public Service Commission had no competence to deal with the question of the correct date of birth of the Appellant-Interested Party.

The question, which in this case, I really have in the first place to decide, seems to me to be (a) whether it is within the competence of the Public Service Commission to retire public officers and (b) if the answer to the first question is in the affirmative, then to examine whether or not the Public Service Commission was competent to take a specific decision relating to the correct date of birth of the Appellant for the purpose of her retirement.

Before I deal with these two questions, I will in brief, deal with the facts of this case.

On January 10, 1966, Respondent-Applicant, a member of the Association of Government Dental Officers, in his capacity as a secretary of the Association wrote a letter to the Ag. Minister of Health complaining that the date of birth of the Appellant, who was the Senior Dental Officer, had been altered wrongly from the date officially recorded in relation to her service; and an examination of this question was requested with a view to protecting the interests of the other Dental Officers. It is not in dispute that the Respondent is a Dental Officer, 1st Grade, and that together with another Dental Officer are the most senior among the rest of the Dental Officers; and that the Respondent possesses the qualifications for promotion to the post of Senior Dental Officer.

On January 7, 1943, the appellant in her application for permanent employment with the Cyprus Civil Service, she declared that she was born at Ktima on December 26, 1911 and supported her application by a certificate of birth of the Commissioner of Paphos dated January 8, 1943. In her personal file of the Ministry of Health there was filed another certificate of birth dated January 21, 1935, giving as her date of birth December 26, 1911.

On November 19, 1959, the Appellant wrote a letter to the Establishment Secretary of the then Colony of Cyprus, and raised the question that the date of her birth as stated in her personal file was not correct, and it had to be altered, so as to read December 26, 1912, which she claimed was the correct date of her birth.

As a matter of fact in April, 1960, the date of birth of the Appellant was altered to be for official purposes December 26, 1912. It is to be observed that it is this administrative decision that the Respondent is challenging, because had it not been for such alteration of Appellant's date of birth, the appellant was to retire from Public Service on December 26, 1966, under the provisions of Section 8 of the Pensions Law, Cap. 311. The compulsory age of retirement under the provisions of the Law was at the material time the age of fifty-five.

On March 24, 1966, the Ag. Minister of Health, after having consulted the Attorney-General of the Republic, placed the matter together with the advice of the Attorney-General, before the Public Service Commission, as the organ vested with competence to deal with such matter. On May 13, 1966 the Ag. Minister of Health addressed a letter to the Public Service Commission requesting a reply as to whether or not, the Commission was prepared to examine the matter raised earlier.

On June 9, 1966, the Public Service Commission met, and as the minutes read, it decided "not to deal with the matter and let anybody affected to have a recourse to the Court".

On June 21, 1966, the Ag. Minister of Health, wrote a letter informing the Association of Government Dental Officers of the decision of the Commission; and as a result the Respondent made a recourse to the Supreme Court, dated July 27, 1966, claiming, *inter alia*, in paragraph 1:

"A declaration of the Honourable Court that the omission of the Respondents whereby they refused to correct the date of birth of a public officer viz., Mrs. Stavroulla Lyssioutou, ought not to have been made and that whatever has been omitted should have been performed".

The Opposition filed on the 29th September, 1966, was to the effect that there was no omission on the part of Respondent; because Respondent had refused to deal with the

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matter complained of after a careful examination of the whole matter which included a perusal of the relevant Registers of Births, and because the Establishment Secretary decided that the 26th December, 1912, should be accepted as the date of Mrs. Lyssioutou's birth for all official purposes.

The learned trial Judge in a careful and considered judgment found that the Applicant was entitled to make a recourse; and after examining whether or not there existed in this case an omission on the part of the Public Service Commission to deal with the question of the correct date of birth of the Interested Party, he had this to say at p. 29:

“For all the above reasons I am of the opinion that, in the circumstances of this Case, the Commission's refusal to deal with the matter raised by the letter dated the 10th January, 1966 (*exhibit 3*) amounts to a wrongful omission and it is hereby declared that such omission ought not to have been made and that what has been omitted should have been performed”.

Now with regard to the first question whether or not the Public Service Commission had competence, I consider it constructive to quote the words of Lord Radcliffe, in the case of *Attorney-General for Canada v. Hallet and Carey L. D. and Another*, [1952] A.C. 427 at p. 449:

“The paramount rule remains that every statute is to be expounded according to its manifest or express intention”.

Let us now consider whether this matter comes within the ambit of paragraph 1 of Article 125 of our Constitution, which deals with the competence of the Public Service Commission. It reads:

“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”.

The words in this paragraph, which are immediately applic-

able to the present case are: "retire and exercise disciplinary control over, including dismissal or removal from office of public officers".

It is stated here on behalf of the Appellant, that the Public Service Commission has no competence to deal with the retirement of public officers, because the compulsory retirement of an officer reaching the age of retirement is taken automatically by operation of law and not by a decision of the Public Service Commission. With due respect to the argument advanced, I hold the view that the Public Service Commission has competence in this case, because to my mind the Court is bound before reaching a decision on the question of whether the Public Service Commission has competence to retire or not a public officer, to examine the nature, objects and the scheme of paragraph 1 as a whole with regard to the functions of the Public Service Commission, and in the light of that examination to consider exactly what is the area over which its powers are given by that paragraph and under which the competent authority is purported to act.

The view that it is right in each case to examine the nature, objects and scheme of the relevant legislation as a whole is further supported by the fact that the Supreme Constitutional Court took such a course in the case I am about to cite.

The Supreme Constitutional Court of Cyprus dealing with paragraph 1 of Article 125 in *Ahmet Nedjati* and *The Republic of Cyprus*, (1961) 2 R.S.C.C. 78, had this to say at p. 82:

"In interpreting any particular provision of paragraph 1 of Article 125 due regard must be had to the context of the paragraph as a whole and, therefore, no particular provision thereof should be interpreted in such a way as to result in defeating the intention and object of all or any of the remaining provisions of the said paragraph".

Later on they say:

"The Court is of the opinion that paragraph 1 of Article 125 constituted the Public Service Commission as the only competent organ to decide on all matters stated therein concerning the individual holders of public offices. It will be seen, therefore, that the objects of

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paragraph 1 of Article 125 include, not only the safeguarding of the efficiency and proper functioning of the public service of the Republic, but also the protection of the legitimate interest of the individual holders of public offices”.

Having reached this conclusion I now turn to the legislation under consideration in the present case. Of its nature it concerns the retirement of public officers. Section 8(1) of the Pensions Law Cap. 311, so far as relevant reads:

“It shall be lawful for the Governor to require or permit any officer to retire from the service of Cyprus at any time after his attaining the age of 50 years and also in the case of a female officer to require or permit such officer to retire for the reason that she has married or is about to marry, and retirement shall be compulsory for every officer on attaining the age of 55 years”.

In *Chrysanthos Makrides and The Republic of Cyprus*, (1961) 2 R.S.C.C. 8 the Court dealing with the Pensions Law had this to say at p. 12:

“Notwithstanding the fact that under the constitutional and legal principles prevailing in crown colonies, such as the former colony of Cyprus was, matters of pension and gratuity are, by legal fiction, regarded as discretionary acts of grace, they were nevertheless vested ‘rights’ of the individual concerned, inasmuch as they could be vindicated through the appropriate administrative procedure”.

In *Mehmet Ali Rouhi and The Republic of Cyprus*, (1961) 2 R.S.C.C. 84 the Court dealing again with the provisions of the Pensions Law, had this to say at p. 87:

“In the opinion of the Court when a public officer reaches the age of retirement the appropriate administrative action is taken by operation of law without the taking of a decision in the particular case.

Paragraph 1 of Article 125 of the Constitution is a provision defining the competence of the Public Service Commission. The taking of a decision is an essential ingredient of the notion of competence. A provision of a law not requiring the taking of a decision does not involve the exercise of competence. It follows, there-

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fore, that provisions such as those contained in the Pensions Law, Cap. 311, making retirement automatic by operation of law on reaching a specified age limit are not inconsistent with the competence of the Public Service Commission to deal with matters relating to retirement and requiring the taking of a specific decision. In the circumstances the said provisions of Cap. 311 continue in force, without any modification in this respect under Article 188 of the Constitution, and they, therefore, come within the expression 'subject to the provisions of any law' in paragraph 1 of Article 125".

In *Panaretos Ieromonachos and The Republic of Cyprus (Public Service Commission)*, 4 R.S.C.C. 82 the Supreme Constitutional Court dealing with the question of the ascertainment of the correct age of an officer for the purposes of retirement from Public Service had this to say at p. 85:

"In the opinion of the Court the Respondent acted quite correctly in applying the principle laid down in the aforesaid General Order II/1.47 and the established practice in this matter because if the said principle and the established practice were not to be adopted the result would follow that it would be open to an officer, who had given an incorrect date of his birth on entering the public service, and who, throughout the length of his service, thus had the advantage of such incorrect date and upon which both he and the Government had throughout such service acted as being the correct date, to have the said date changed when it suited him to do so just before his retirement and thereby obtain a second advantage. The Court is of the opinion that such a situation would not be in the public interest and that the public interest requires that positive evidence of the exact date of the birth of an officer would be necessary in order to rebut the presumption that the date of birth of the officer for official purposes, and in particular for the purposes of calculating the date of his retirement, is the date which such officer gave on entering the public service".

In *Andreas A. Markoullides and The Republic (Public Service Commission)*, 3 R.S.C.C. 30 the Court said at p. 33:-

"In the opinion of the Court no conflict, in effect, arises between paragraph 1 of Article 125 and section

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10 of Cap. 171. Clearly Cap. 171 is a Law which has continued in force under, and subject to, the provisions of Article 188 of the Constitution. Under such Article 188, and in particular paragraph 3 thereof, the corresponding body of the Republic which has to be substituted in Cap. 171 for the Authority, in all matters falling within the competence of the Commission under paragraph 1 of Article 125, is the Commission and likewise, the Council of Ministers is, in this connection, to be substituted in Cap. 171 for the Governor or the Governor-in-Council”.

It is plain in my view that under paragraph 3(b) of Article 188 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 of the law otherwise requires”. In view of the express provision in paragraph 1, of Article 125, of the Constitution, I am of the opinion, that it confers on the Public Service Commission competence in relation to the retirement of public officers; and, therefore, I am of the view, that because of the provisions of paragraph 4 of Article 188, in the present case, section 8(1) of the Pensions Law, Cap. 311, has to be applied modified, in order to be brought within the Constitution, and particularly within paragraph 1 of Article 125.

As I have said earlier the Public Service Commission has competence in the present case, because if the words in paragraph 1 of Article 125 were to be expounded according to its manifest or express intention, then in my view, the word “retire” ought to have been given the express meaning which the Constitutional Drafters intended it to have, that is to say, that the Public Service Commission has competence, in a proper case, to take a decision to retire public officers from office. If the word “retire” was intended to be read and applied with the words “and exercise disciplinary control” over public officers in disciplinary proceedings only, then in my view the word “retire” is superfluous. That it is not so, it is evident that the word “retire” is followed by the word “and” which is of a conjunctive nature; and, therefore, make it clear that the Public Service Commission has competence to retire public officers from office, in those cases necessitating

the taking of a specific decision; and quite apart from those cases where the retirement of a public officer becomes automatic by operation of law, under the provisions of the Pensions Law, Cap. 311. See *Ali Rouhi (supra)*.

Furthermore the words "exercise disciplinary control over" following the word "and" indicate to my mind, that the Commission, is vested with a further discretion to dismiss or remove from office in a proper case, public officers; and those words do not refer in my opinion, to the word "retire".

One would observe the change of language here, that the words "including dismissal or removal from office of" following the words "exercise disciplinary control over" were intended to apply to the words "exercise disciplinary control" only, thus empowering the Commission in carrying out these duties to have additional powers over the public officers.

Having reached the conclusion that the Public Service Commission is vested with competence under the provisions of paragraph 1 of Article 125, in a proper case, to retire public officers from office, it follows in my view, that in the present case, the Commission was also competent to deal with the question of the alteration of the date of birth of the Interested Party, and to reach a specific decision; because such alteration was made for the purpose of the continuance of the Interested Party in Public Service and, although incidental it was clearly connected with the question relating to her retirement.

For all these reasons, I am of the view, that the decision of the learned trial Judge to refer the matter to the Public Service Commission for examination and decision, was the right one; and, therefore, I affirm the judgment of the trial Court on this issue.

Having had the advantage of reading in advance the majority judgment of this Court, I do not propose dealing in my judgment separately with the rest of the issues argued in this appeal. I might well content myself with merely expressing my concurrence with the judgment of Mr. Justice Triantafyllides, which seems to me to be exhaustive and convincing.

I, therefore, think that the appeal should be dismissed.

VASSILIADES, P.: Does any question of costs arise?

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1968
April 9

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STAVROULLA
LYSSIOTOU
v.
KYRIAKOS
G. PAPASAVVA
AND ANOTHER

—
Vassiliades, P.

Mr. Papachrysostomou: I claim costs for the Interested Party.

VASSILIADES, P.: Any other counsel who wishes to be heard regarding costs?

Mrs. Loizides: I submit that there should be no order as to costs as the legal issues involved were rather difficult and of public importance.

VASSILIADES, P.: The trial Judge made no order as to costs in the proceedings before him. As regards the costs in the appeal we are inclined to the view that, as this case does involve what appear to be complicated questions of construction of legislation, we should follow the same course as the trial Judge and make no order as to costs.

In the result the appeal is allowed, the judgment of the trial Judge is set aside with no order as to costs here or at the trial.

Appeal allowed. Judgment of trial Court set aside. No order as to costs here or at the trial.