

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SAVVAS
PERICLEOUS
v.
REPUBLIC
(MINISTER OF
FINANCE)

SAVVAS PERICLEOUS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH

THE MINISTER OF FINANCE,

Respondent.

(Case No. 61/68).

Public Officers—Education grant—Refusal of—Offer of promotion to public officer on condition that he will not be entitled to any education grants for his children—Acceptance of promotion simpliciter does not mean acceptance as well of the said condition—But even if it were to be assumed, that there has been acceptance of the condition as well—Then such acceptance in the instant case is in law inoperative and no bar to the applicant's right to claim such education grant—Because such acceptance was brought about "by fear of prejudicial consequences" of non-acceptance i.e. by not accepting the conditions, the applicant would forego the promotion—Consequently, such acceptance could not, in the circumstances, be said to have been a free or voluntary one—In any case, even if there had been acceptance and it had been a free and voluntary one, still it would have been of no avail to the respondent—Because in view of the age of the applicant's son at the time of promotion, his right to an education grant was at the time a contingent one—And a contingent right cannot legally be surrendered.

Administrative acts or decisions—Acceptance of or acquiescence to—Effect of acceptance—Bar to the right of subsequently challenging such administrative act or decision—But acceptance must be a free and voluntary one—Principles applicable—See also supra.

Acceptance of administrative acts or decisions—Effect—Principles applicable—See supra.

Contingent right—Cannot be legally surrendered—See also supra.

This is a recourse under Article 146 of the Constitution whereby the applicant, a Forest Ranger in the public service, seeks the annulment of a decision of the Minister of Finance

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refusing him an education grant towards the expense of the education of a son of his named Athos at Salonica University during the academic year 1966–1967. The subject decision of the Minister was taken on the sole ground that the applicant had previously accepted promotion in which there was an express condition that he would not be entitled to an education grant.

It was argued by counsel for the respondent that by accepting the promotion on the condition stated above, the applicant lost his right to such a grant, because when a person unreservedly accepts a particular administrative act he is barred from subsequently challenging it in a Court of law ; acceptance may be express or implied ; but it must be free and voluntary, which it is not if it has been brought about “by pressure of the prejudicial consequences” of non-acceptance : See Kyriacopoulos, Administrative Law, Vol. 3, p. 124 paragraph 2, and Porismata Nomologhias pp. 260, 261 (“ Assent and Acceptance ”).

Annulling the decision complained of, the Court :—

Held, (1). In the first place there is nothing to compel the conclusion that the condition was accepted. It is significant that the applicant’s reply to the offer of promotion makes no reference to the said condition. Had the applicant intended to accept it one would have expected the acceptance of the offer of promotion to have referred to it. It is true that the condition is referred to the actual instrument of promotion. But having regard to the terms in which the offer had been accepted I do not think that silence following the receipt of that instrument implies acceptance of the condition.

(2) However, if acceptance of the condition is to be implied, the question arises whether it is free or voluntary. But why should the applicant have freely and voluntarily surrendered his right to an education grant ? He had been placed in the dilemma of either accepting the condition or foregoing the promotion. If acceptance in the face of such dilemma is not an instance—and, in the sphere of relations between the administration and a public officer, a striking instance—of acceptance brought about “by fear of prejudicial consequences”, I can hardly imagine any case where the salutary requirement that acceptance must be free and voluntary could ever operate to protect a public officer from excess or abuse of power on the part of the administration.

(3) Even if there had been an acceptance and it had been a free and voluntary one, still it would have been of no avail to the respondent because in view of the son's (Athos', *supra*) age the right to an education grant was at the time a contingent one and therefore could not legally be surrendered (see Kyriacopoulos, *op. cit.* Vol. 2, at p. 289, section 3(a)).

(4) For the above reasons the subject decision is annulled. The respondent to pay the applicant £15 costs.

Sub judice decision annulled.
Order for costs as above.

Cases referred to :

Loizides and The Republic, 1 R.S.C.C. 107 ;

Boyiatzis v. The Republic, 1964 C.L.R. 367.

Recourse.

Recourse against the refusal of the respondent to grant to applicant education grant, for the academic year 1966–1967, in respect of his son who was studying at Salonica University.

M. Christofides, for the applicant.

L. Loucaides, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following* judgment was delivered by :

STAVRINIDES, J. : The applicant, a Forest Ranger, seeks annulment of a decision of the Minister of Finance conveyed to him by a letter dated December 13, 1967 (*exhibit 2*), whereby he was refused an education grant towards the expense of the education of a son of his named Athos at Salonica University during the academic year 1966–1967. So far as material, *exhibit 2* is in these terms :

“ With reference to your application of November 7, 1961, for an education grant in respect of your son Athos, I regret to inform you that you are not entitled to such a grant because you accepted promotion in which there was an express condition that ‘ you are not entitled to an education grant ’ ”.

The following facts are common ground : Immediately before the date of the coming into operation of the

* For final judgment on appeal see (1972) 2 J. S. C. 167 to be reported in due course in (1972) 3 C. L. R.

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Constitution the applicant was holding a post in the public service of Cyprus, *viz*, that of a Forester. In 1962 he was offered promotion to his present post by a letter (*exhibit 1*) dated June 22 of that year written in English which, so far as material, reads :

“ 4. The other terms and conditions of service remain unchanged, except that you will not be entitled to any education grants.

5. Please inform me as early as possible whether you wish to accept this offer.”

The applicant replied to that offer by a letter dated the 28th of that month (*exhibit 3*), which reads :

“ Reference to your letter of June 22, 1962, I have to inform you that I accept the promotion to the post of Forest Ranger offered to me with great thanks.”

He was promoted by an instrument dated July 10, 1962, (*exhibit 4*), stating that the promotion was made

“ on the conditions set out in my offer of June 22, 1962.”

It is not disputed that throughout the academic year 1966–1967 Athos studied at Salonica University. Finally, it appears from his father’s application to the administration for the grant (*exhibit 5*), and is not questioned, that he was born on July 14, 1945, so that at the time of the promotion he was not quite seventeen years of age.

Article 192, paras. 1 and 7, of the Constitution, so far as material, reads

“ 1. Subject to any other provision of the Constitution, every person who immediately before the date of the coming into operation of the Constitution holds a post or office in the public service is entitled to the same conditions of service as were applicable to him before that date. Such conditions cannot be altered to his disadvantage during the continuance of his service in the public service of the Republic on the said date or thereafter.”

“ 7. In this Article the following expressions have the meanings hereby respectively assigned to them.

(a)

(b) ‘ conditions of service ’ includes, subject to the necessary adaptations in accordance with the pro-

visions of the Constitution, the matters relating to remuneration, leave, dismissal or retirement, pension, additional allowances or other like grants."

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It was held by the former Supreme Constitutional Court in *Loizides and The Republic*, 1 R.S.C.C. 107, and affirmed by the present Supreme Court in *Boyiatzis v. The Republic*, 1964 C.L.R. 367, that "conditions of service" includes the right to an education grant; and the sole ground of objection to this application that was relied upon, whether in the opposition or at the hearing before me, was that given in the subject decision, *viz.* that the applicant had accepted promotion on the condition stated in para. 4 of the offer exhibit 1 and by so doing had lost his right to such a grant.

In support of that objection counsel for the respondent cited Kyriacopoulos, *Administrative Law*, vol. 3, p. 124, para. 2, and *Porismata Nomologhias*, pp. 260, 261 ("Assent and Acceptance"). In the context of this case the passages referred to come to this: When a person unreservedly accepts a particular administrative act he is barred from subsequently challenging it in a Court of Law. Acceptance may be express or implied. But it must be free and voluntary, which it is not if it has been brought about "by pressure of the prejudicial consequences" of non-acceptance.

In my judgment the applicant must succeed for the following reasons: In the first place there is nothing to compel the conclusion that the condition was accepted. It is significant that the reply to the offer makes no reference to it. Had the applicant intended to accept it one would have expected the acceptance to have referred to it. It is true that the condition is referred to again in the actual instrument of promotion. But having regard to the terms in which the offer had been accepted I do not think that silence following the receipt of that instrument implies acceptance of the condition. However, if acceptance is to be implied the question arises whether it is free or voluntary. But why should the applicant have freely and voluntarily surrendered his right to an education grant? He had been placed in the dilemma of either accepting the condition or foregoing the promotion. If acceptance in the face of such a dilemma is not an instance—and, in the sphere of relations between the administration and a public officer, a striking instance—of acceptance brought about "by fear of prejudicial consequences", I can hardly imagine any case where the salutary requirement that accept-

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ance must be free and voluntary could ever operate to protect a public officer from excess or abuse of power on the part of the administration.

Even if there had been an acceptance and it had been a free and voluntary one, still it would have been of no avail to the respondent because in view of Athos's age the applicant's right to an education grant was at the time a contingent one and therefore could not legally be surrendered. As Kyriacopoulos, op. cit. vol. 2, says at p. 289, section 3 (a);

“Relinquishment of a public right which is not vested but contingent is not possible. . . Thus a public officer actually in the service cannot relinquish the pension that he will be entitled to in certain circumstances on leaving the public service, because as yet he has no right whatsoever to the pension.”

For the above reasons the subject decision is annulled. The respondent to pay the applicant £15 costs.

*Sub judice decision
annulled. Order for
costs as above.*