1972
June 20
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REPUBLIC
(MINISTRY
OF FINANCE)

v.

NISHAN
ARAKIAN
AND OTHERS

[TRIANTAFYLLIDES, P., L. LOIZOU, A. LOIZOU, MALACHTOS, JJ.]

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER OF FINANCE,

Appellant,

and

NISHAN ARAKIAN AND OTHERS,

Respondents.

(Revisional Jurisdiction Appeal No. 95).

Pensions—Cost of living allowance—Refusal of the Minister of Finance to pay to the respondents who are pensioners public officers a cost of living allowance tied to the cost of living index in the same manner as such allowance is being paid to serving public officers—Such refusal does not amount to a differentiation between serving and pensioner public officers which, in the light of the proper application of the principle of equality, is contrary to, or inconsistent with, the provisions of paragraph 1 of Article 28 of the Constitution.

Public Officers—Serving public officers and pensioner public officers—Their status is essentially different both factually and legally—Consequently, the aforesaid refusal of the Minister of Finance does not contravene the principle of equality, safeguarded under Article 28.1 of the Constitution.

Pensioners—Cost of living allowance—See supra.

Equality—Principle of equality—Article 28.1 of the Constitution—Such principle does not convey the notion of exact arithmetical equality—It allows reasonable distinctions which have to be made in view of the intrinsic nature of things.

Constitutional law—Principle of equality—The principle of

non-discrimination—Article 28 of the Constitution—Scope and effect—See supra.

This is an appeal by the Republic through the Minister of Finance from the decision of a Judge of this Court (reported in (1971) 3 C.L.R. 475) in a recourse under Article 146 of the Constitution made by the respondents, who are pensioners public officers, against the refusal of the Minister to pay to them a cost of living allowance tied to the cost of living index in the same manner as such allowance is being paid to serving public officers. The learned trial Judge annulling the said refusal of the Minister held that it violated the respondents' right to equal treatment, safeguarded by Article 28.1 of the Constitution. This appeal is now taken by the Minister on the ground that no such violation has taken place in the sense of the aforesaid constitutional provisions.

The Court of Appeal (the Supreme Court) accepted the Minister's submission, allowed the appeal, set aside the decision of the trial Judge whereby he annulled the aforesaid refusal of the Minister and dismissed the respondents' recourse.

Allowing this appeal by the Minister of Finance, the Supreme Court, —

Held, (1) The application of the principle of equality has been considered in Mikrommatis case (*infra*), where it was stated that "equal before the law in paragraph 1 of Article 28 of the Constitution does not convey the notion of exact arithmetical equality but it safeguards only against arbitrary differentiations and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things" (See to the same effect other Cyprus cases as well as a number of American and Greek cases, *infra*)

(2) As correctly pointed out by the trial Judge the provision made by the said Article 28.1 excludes discrimination in State action not only in the legislative field but also in the administrative sphere of Government

(3) The status of a serving public officer and that of a pensioner public officer are, obviously, essentially different, both factually and legally; they may be similar or analogous to each other in certain respects but the differences outweigh definitely any similarities or analogies.

(4) Consequently, this appeal is allowed and the recourse filed in this case by the respondents and in which the judgment appealed against was given, is hereby dismissed.

Appeal allowed.
Recourse dismissed.

Cases referred to:

Mikrommatis and *The Republic*, 2 R.S.C.C. 125, at p. 131;

Panayides v. *The Republic* (1965) 3 C.L.R. 107;

Louca v. *The Republic* (1965) 3 C.L.R. 383;

Impalex Agencies Ltd. v. *The Republic* (1970) 3 C.L.R. 361;

Missouri Pacific Railway Company v. *Humes*, 115 U.S. 512 (29 L. ed. 463);

Lindsley v. *Natural Carbonic Gas Company*, 220 U.S. 61 (55 L. ed. 369);

Power Manufacturing Co. v. *Saunders*, 274 U.S. 490 (71 L. ed. 1165);

Tigner v. *State of Texas*, 310 U.S. 141 (84 L. ed. 1124);

Semler v. *Oregon State Board of Dental Examiners*, 294 U.S. 608 (79 L. ed. 1086);

American Federation of Labour v. *American Sash and Door Company*, 335 U.S. 538 (93 L. ed. 222);

Williamson v. *Lee Optical of Oklahoma*, 348 U.S. 483 (99 L. ed. 563);

Morey v. *Doud*, 354 U.S. 457 (1 L. ed. 2d 1485, at p. 1490);

Levy v. *Louisiana*, 391 U.S. 68 (20 L. ed. 436, at p. 439);

Decision of the European Court of Human Rights, in the case "Relating to certain aspects of the laws on the use of languages in education in Belgium", decided in 1968, at p. 34 of this decision.

Decisions of the Greek Council of State Nos. 1273/1965, 1247/1967, 1870/1967, 2063/1968, 1215/1969.

Appeal.

Appeal from the judgment of a Judge of the Supreme Court of Cyprus (Stavrinides, J.) given on the 31st December, 1971 (Case No. 18/70) whereby the refusal of the respondent to pay cost of living allowance to the applicants was declared null and void.

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

L. Clerides, for the respondents.

Cur. adv. vult.

The judgment of the Court was delivered by :-

TRIANTAFYLLIDES, P. : This is an appeal from the decision * of a judge of this Court in relation to a recourse which was made by the respondents, who are pensioners public officers, against the refusal of the Ministry of Finance to pay to them a cost of living allowance tied to the cost of living index in the same manner as such an allowance is being paid to serving public officers. The learned trial judge decided that the refusal of the Ministry of Finance violated the respondents' right to equal treatment, safeguarded by Article 28.1

* Reported in (1971) 3 C.L.R. 475.

of the Constitution; and this appeal was made on the ground that no such violation has taken place.

The *sub judice* decision of the Ministry of Finance was communicated by a letter dated the 3rd December, 1969, which was written in reply to a letter of counsel for the respondents claiming a cost of living allowance tied to the cost of living index; in refusing such an allowance the Ministry of Finance stated that increases of pensions are granted in accordance with the from time to time prevailing circumstances, that an increase of 19½% had been granted recently and that the matter of a further increase of pensions could be examined when this would become necessary.

The existence of an established Government practice to grant increases of pensions from time to time due to rises in the cost of living index is shown by the contents of an Appendix to the Opposition which was filed by the Republic in the proceedings before the trial judge; such increases of pensions are granted as revisions of pensions and not by means of a cost of living allowance tied to the variations of the cost of living index.

It is quite clear that we are not concerned in this case with either a refusal of the Government to increase pensions in accordance with its aforementioned practice or with a decision of the Government to discontinue such practice; nor are we dealing with any complaint regarding the manner of the implementation of the said practice in relation to any specific category of pensioners public officers. The issue before us is whether, on the strength of the right to equal treatment, under Article 28.1 of the Constitution, the respondents as pensioners public officers are entitled to a cost of living allowance tied to the cost of living index, as such an allowance is paid to serving public officers.

The application of the "principle of equality" has been considered in *Mikrommatis* and *The Republic*, 2 R.S.C.C. 125, where it was stated (at p. 131) that "'equal before the law' in paragraph 1 of Article 28 does not convey the notion of exact arithmetical equality but it safeguards only against arbitrary differentiations

and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things"; and the *Mikrommatis* case was followed in, *inter alia*, *Panayides* v. *The Republic* (1965) 3 C.L.R. 107, *Louca* v. *The Republic* (1965) 3 C.L.R. 383, and *Impalex Agencies Ltd.* v. *The Republic* (1970) 3 C.L.R. 361.

Valuable guidance can be derived in this respect from decisions of the Greek Council of State («Συμβούλιον Ἐπικρατείας»). In addition to the decision in Case 2080/50, which is mentioned in the judgment appealed from, the following decisions may be also referred to :-

In Case 1273/65 it was stated that the principle of equality entails the equal or similar treatment of all those who are found to be in the same situation («ἡ συνταγματικὴ ἀρχὴ τῆς ἰσότητος, ὑπὸ τὴν ἔννοιαν τῆς ἴσης ἢ ὁμοιομόρφου μεταχειρίσεως πάντων τῶν ὑπὸ τὰς αὐτὰς συνθήκας τελούντων»).

In Case 1247/67 it was held that the principle of equality safeguarded by Article 3 of the Greek Constitution of 1952—which corresponds to Article 28.1 of our Constitution—excludes only the making of differentiations which are arbitrary and totally unjustifiable («Διότι τὸ ἄρθρον τοῦτο, ὁρίζον ὅτι οἱ Ἕλληνες εἶναι ἴσοι ἐνώπιον τοῦ Νόμου, ἀποκλείει μόνον τὴν ὑπὸ τοῦ νομοθέτου θέσπισιν διακρίσεων αὐθαιρέτων καὶ ὅλως ἀδικαιολογήτων»); and exactly the same was held in Case 1870/67.

In Case 2063/68 it was held that the principle of equality was not contravened by regulating differently matters which were different from each other («οὐδόλως προκύπτει παραβίασις τῆς ἀρχῆς τῆς ἰσότητος καὶ ὡς ἐκ τούτου ἀκυρότης τῶν προσβαλλομένων πράξεων, ἐφ' ὅσον πρόκειται περὶ ρυθμίσεων σχέσεων τελουσῶν ὑπὸ διαφόρους πραγματικὰς συνθήκας, αἵτινες δὲν ἀποκλείουν ἀνομοιομορφίας ἐν τῷ διακανονισμῷ αὐτῶν»).

In Case 1215/69 it was held that the principle of equality is applicable to situations which are of the same nature («τὴν ἀρχὴν τῆς ἰσότητος ἐφαρμοστέαν ἐπὶ περιπτώσεων τελουσῶν ὑπὸ τὰς αὐτὰς ἐν γένει συνθήκας»).

In the United States of America the application of

the principle of equality has been dealt with in numerous cases decided by the Supreme Court; in addition to the cases of *Missouri Pacific Railway Company* v. *Humes*, 115 U.S. 512, 29 L. ed. 463, *Lindsley* v *Natural Carbonic Gas Company*, 220 U.S. 61, 55 L. ed. 369, *Power Manufacturing Co.* v. *Saunders*, 274 U.S. 490, 71 L. ed. 1165, and *Tigner* v. *State of Texas*, 310 U.S. 141, 84 L. ed. 1124, which have been cited in the judgment appealed from, the following cases may be referred to also :-

In *Semler* v. *Oregon State Board of Dental Examiners*, 294 U.S. 608, 79 L. ed. 1086, it was held that an enactment making the use of certain types of advertising a ground for revocation of a licence to practise dentistry was not unconstitutionally discriminatory because it did not extend to other professional classes; in his judgment Chief Justice Hughes stressed (at p. 1089) :-

> "The State was not bound to deal alike with all these classes, or to strike at all evils at the same time or in the same way."

In *American Federation of Labour* v. *American Sash* & Door Company, 335 U.S. 538, 93 L. ed. 222, it was held that a State constitutional amendment which prohibits employment discrimination against non-union workers, but not against union workers, does not deny union workers equal protection of the laws, particularly where they are afforded protection by State laws, even though it is not clear whether there is afforded the same kind of sanction to both classes of workers.

In *Williamson* v. *Lee Optical of Oklahoma*, 348 U.S. 483, 99 L. ed. 563, it was held that no violation of the equal protection clause of the Fourteenth Amendment to the U.S.A. Constitution had resulted from the fact that a State statute regulating the business of opticians exempted from regulation all sellers of ready-to-wear glasses. In his judgment Mr. Justice Douglas stated (at p. 573) :-

> "Evils in the same field may be of different dimensions and proportions, requiring different

remedies... The prohibition of the Equal Protection Clause goes no further than the invidious discrimination."

In *Morey* v. *Doud*, 354 U.S. 457, 1 L. ed. 2d. 1485, Mr. Justice Burton adopted (at p. 1490), *inter alia*, the view, which was expressed earlier in the *Lindsley* case (*supra*) by Mr. Justice Van Devanter, that

> "A classification having some reasonable basis does not offend against that clause"—the equal protection clause—"merely because it is not made with mathematical nicety or because it results in some inequality".

In *Levy* v. *Louisiana*, 391 U.S. 68, 20 L. ed. 2d. 436, Mr. Justice Douglas pointed out (at p. 439) in his judgment :-

> "In applying the Equal Protection Clause to social and economic legislation, we give great latitude to the legislature in making classifications."

An exposition of the principle of equality can be found, also, in the decision of the European Court of Human Rights, of the Council of Europe, in the case "Relating to certain aspects of the laws on the use of languages in education in Belgium", which was decided in 1968; it was stated in this decision (at p. 34) :-

> ".... the Court, following the principles which may be extracted from the legal practice of a large number of democratic States, holds that the principle of equality of treatment is violated if the distinction has no objective and reasonable justification."

Article 28.1 of our Constitution reads as fololws :-

> "All persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby."

As correctly pointed out by the trial judge the provision made by Article 28.1 excludes discrimination

in State action not only in the legislative but also in the administrative sphere of Government.

In the light of the foregoing review of the law we have now to decide whether or not the complained of decision of the Ministry of Finance is contrary to, or inconsistent with, Article 28.1, as it was found to be by the trial judge :

> The status of a serving public officer and that of a pensioner public officer are, obviously, essentially different, both factually and legally; they may be similar or analogous to each other in certain respects but the differences outweigh definitely any similarities or analogies.

As it appears from the material on record before us the Government has been adopting, by way of social and economic policy, different means in order to enable serving public officers and pensioners public officers, respectively, to meet the rising cost of living; though in both cases such means relate to rises of the cost of living index, pensioners public officers do not receive, as serving public officers do, a cost of living allowance tied to the fluctuations, upwards or downwards, of the cost of living index, but there exists an established practice of Government—(even if such practice might not be taken as creating a relevant vested right)—to grant from time to time increases of pensions in view of rises in the cost of living index.

In the circumstances, and especially as the *sub judice* refusal of the Ministry of Finance to grant to the respondents a cost of living allowance tied to the cost of living index has been coupled with a statement of readiness to consider, instead, when necessary, the grant of increases of pensions in accordance with the aforementioned established practice, we are of the opinion that it ought not to be held that such refusal amounts to a differentiation between serving public officers and pensioners public officers which, in the light of the proper application of the principle of equality, is contrary to, or inconsistent with, Article 28.1 of the Constitution. It was up to the respondents, as the persons complaining of unequal treatment (see, *inter alia*, *Lindsley*, *supra*,

and *Morey, supra*), to show that the decision in question of the Ministry of Finance did not rest upon any reasonable basis and that it was essentially arbitrary; and they have failed to do so.

It is to be noted that one of the respondents, Bamboskis, is a pensioner public officer who retired from the public service in 1965—after the coming into force of the Constitution in 1960—and so it has to be examined if any right of his, as a serving public officer in 1960, which is safeguarded under Article 192 of the Constitution, has been infringed by the *sub judice* decision: We take the view that no such infringement has taken place because at the time when the Constitution came into force the terms and conditions of service of this respondent did not include the right to a pension supplemented by a cost of living allowance tied to the cost of living index.

For all the reasons set out in this judgment this appeal is allowed and consequently the recourse of the respondents, in which the appealed from first instance decision was given, is dismissed.

Appeal allowed.