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LEONTIOS  
SAVVIDES

v.

REPUBLIC  
(MINISTRY  
OF FINANCE)

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LEONTIOS SAVVIDES,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTRY OF FINANCE,

*Respondent.*

(Case No. 429/71).

*Public Officers — Increments — Additional increments — Decision of respondent Minister refusing grant of additional increments to applicant on his "promotion" from post of accounting officer to that of accountant—Not contrary to law or in excess or abuse of powers because the Minister was only empowered to grant such increments to certain officers only upon their first "appointment" and not upon their "promotion".*

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*Public Service Law, 1967 (Law 33 of 1967)—"Appointment" and "Promotion" in section 28—Meaning of.*

*Construction of Statutes—"Appointment" and "Promotion" in section 28 of the Public Service Law, 1967 (Law 33 of 1967).*

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*Equality—Article 28 of the Constitution—Principle of Equality—When contravened—Grant of additional increments to firstly appointed public officers and refusal to grant them to serving officers upon their promotion—Principle of equality not violated.*

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The applicant in this recourse complains against the refusal of the respondent to emplace him seven steps above the initial salary scale of the post of accountant second grade to which he was promoted, on the 6th August, 1971, from the post of accounting officer first grade.

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The application was mainly based on the ground that the *sub judice* refusal was discriminatory against the applicant vis-a-vis the other officers who have been emplaced on a salary scale higher than their original salary scale.

5 The Minister of Finance, acting under the powers conferred on him by a decision of the Council of Ministers (No. 5361 dated the 3rd February, 1966) to the effect that he could emplace certain officers upon their appointment in the service to any point above the lower point of the approved scale of their post, granted increments to Chartered Accountants, first entrants in the Government service, in order to attract in the service qualified accountants. Subsequently, however, by a decision taken on the 24th May, 1971, the practice of granting increments to firstly appointed Chartered Accountants was terminated.

10 The Court after dealing with the meaning of the terms "appointment" and "promotion", as laid down in s. 28 of the Public Service Law, 1967, found that the offer of appointment made to the applicant to the said post of accountant second grade was in fact a promotion and held, dismissing the recourse:

1. The power of the Minister of Finance was to grant additional increments to certain officers on their first appointment only; and because the applicant was already in the service, I have reached the conclusion that the decision of the Minister was not taken contrary to law or in excess or abuse of his powers.
2. The principle of equality under article 28 of the Constitution has not been violated. This principle safeguards only against arbitrary differentiation and it does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things and that it is only violated if the distinction has no objective and reasonable justification. Once the power of the Minister was used for granting additional increments to firstly appointed officers, the applicant can hardly complain that there was discrimination towards him, being already a serving officer. I would, therefore, dismiss this contention of counsel, that the principle of equality was violated, once the distinction was based on objective and reasonable justification. (See *Republic v. Arakian and Others* (1972) 3 C.L.R. 294).

*Application dismissed*

Cases referred to:

- 40 *Shamassian and Others v. Minister of Finance* (1973) 3 C.L.R. 341;  
*Republic v. Arakian and Others* (1972) 3 C.L.R. 294.

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### Recourse.

Recourse against the decision of the respondent to emplace applicant on a salary scale of £1,230.— to the post of accountant, second grade instead of £1,566.

*P. Demetriou*, for the applicant.

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*A. Evangelou*, Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

The following judgment was delivered by:—

HADJIANASTASSIOU, J.: In these proceedings, under Articles 28 and 146 of the Constitution, the applicant seeks the following relief:— A declaration that the act and/or decision of the respondent to emplace him on a salary scale of £1,230 to the post of accountant, second grade, instead of £1,566, allowed to Messrs. Antonios Nicolaou, Charalambos Kotsoni and Ioannis Boyiadjis, is *null* and *void* and of no effect whatsoever.

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The applicant has been appointed to the permanent post of accounting officer, 1st grade, on April 21, 1958, and when he became a Certified Accountant, he applied to be appointed to the permanent post of accountant, second grade—a first entry and promotion post—in the treasury department. On July 27, 1971, the Chairman of the Public Service Commission offered him appointment to the post in question w.e.f. 1.8.71; (*exhibit 6*). The salary referred to in the offer was at the rate of £1,230 per annum in the salary scale of £1,230 x 48 – 1,566 x 54 – 1,674. On July 31, 1971, the applicant in reply to the Chairman, informed him that he accepted his offer with thanks (*exhibit 5*); and on August 6, 1971, he was informed that he was appointed to that post (*exhibit 7*).

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The applicant, after serving in his new post for a short while, addressed a letter to the Director-General of the Ministry of Finance, requesting him to authorise his emplacement seven steps above his initial salary scale, *viz.*, £1,566 per annum, with effect from the date of his appointment to the said post. Furthermore, in his letter, he pointed out that this practice has been followed, and similar emplacements above the initial salary scale were authorised by the Ministry of Finance on the appointment of (a) Antonios Nicolaou, accountant, treasury department, appointed on 1.3.63; (b) Charalambos Kotsonis, accountant, treasury department, appointed on 2.1.65; and

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Ioannis P. Boyiadjis, Principal Auditor, Class II, appointed on 1.1.70 (*exhibit 2*).

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5 On October 22, 1971, the Director of the Personnel Department, who comes under the Ministry of Finance, in reply to the applicant, said that he regretted that his application could not be approved "because additional increments to public servants already serving are not granted". The writer goes on that "in the past in certain cases, additional increments were granted on the first appointment in the public service due to  
10 the shortage of qualified accountants" (*exhibit 3*).

The applicant, feeling aggrieved because the Ministry of Finance refused to grant him additional increments, filed the present recourse on November 9, 1971, alleging that the administration was bound to afford him also equal treatment.

15 The application was based on four grounds of law:— (1) That the decision of the respondent was discriminatory against the applicant vis-a-vis the other officers who have been emplaced on a salary scale higher than their original salary scale; (2) that  
20 the respondents have been acting under a misconception of the real facts that the applicant did not possess exactly the same qualifications as the other officers; (3) alternatively, it was alleged that, the respondents—if they were not acting under a misconception—nevertheless, their act or decision was made in abuse or in excess of their powers in not granting the increments;  
25 and (4) that the administrative act complained of was not duly reasoned in the circumstances of this case.

On December 28, 1971, counsel on behalf of the respondent filed the opposition alleging that, the respondent was not treated in a discriminatory manner contrary to Article 28 of the Constitution, because he was not possessing exactly the same qualifications as the other accountants. And in support of the  
30 opposition, counsel further raised in paragraph 2 of the facts, a preliminary point that the applicant had no legitimate interest to file the present recourse, because he had accepted unreservedly the offer made to him by the Public Service Commission regarding the salary scale at the rate of £1,230 per annum.  
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Pausing here for a moment, having heard both counsel on this point, I am afraid that I do not share the contention of counsel on behalf of the respondent that the applicant had no  
40 legitimate interest in filing the present recourse, because if one

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looks at the document of the offer made to him for the appointment to the permanent post of accountant, class II, one would realize that it was not necessary for the applicant to make any reservation with regard to the amount of £1,230, which is the starting rate of his salary. But, of course, with regard to paragraph 4 of the offer relating to “any leave, passage, privileges or education grants”, certainly the applicant was entitled, if he so wished, to reserve his position, once in accordance with a decision of this Court, he was entitled to claim them. I would, therefore, reiterate that, in the circumstances of this case, the applicant was not entitled or had a right when accepting the offer made to him, to reserve his position regarding his claim for additional increments, particularly so, when the appropriate authority for granting those is the Minister of Finance. I would, therefore, dismiss this contention of counsel.

Having had the benefit of hearing further both counsel, I think that counsel for the respondent was properly advised to abandon the point that the refusal to grant to the applicant additional increments was based on the differentiation regarding the qualifications of the Chartered and Certified Accountants, and, therefore, I need not deal with point 2 of the grounds of law.

The first question to be decided on this recourse is whether the Minister of Finance was empowered to grant additional increments. There is no doubt that the Minister impliedly had such power because on March 17, 1964, a letter (*exhibit 9*) was circulated by the Secretary of the Council of Ministers (Circular No. 28 (C.M. 26/59/6)) to all heads of departments, in these terms:-

“ We are directed to inform you that the Council of Ministers had decided ‘that, in view of the present situation –

(a) no acting allowances should be paid in accordance with the relevant General Orders; and

(b) no applications for additional increments should be entertained.

The matter will be reviewed when the situation improves’.

2. The above decision concerns the period from the 1st January, 1964, until further notice”.

I should have added that this circular was issued as a result of submission No. 87/64, made to the Council of Ministers. Subsequently, it became clear that the Minister in 1966 was given a qualified power, because it appears from an extract of the minutes of the meeting of the Council of Ministers dated February 3, 1966, (Decision No. 5361) that it decided that:

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“Τὸ Συμβούλιον καίτοι θεωρεῖ ὅτι ὁ Ὑπουργὸς Οἰκονομικῶν ἤδη κέκτηται τὴν ἐξουσίαν τὴν ἀναφερομένην εἰς τὴν Πρότασιν, ἐν τούτοις πρὸς διάλυσιν πάσης ἀμφιβολίας ἀπεφάσισεν ὅπως ἐκχωρήσῃ εἰς τὸν Ὑπουργὸν Οἰκονομικῶν τὰς ἐξουσίας τὰς ὁποίας κέκτηται (ὅσον ἀφορᾷ τὴν τοποθέτησιν ὠρισμένων ὑπαλλήλων ἀμα τῶ διορισμῶ των) εἰς τὴν Ὑπηρεσίαν εἰς οἰονδήποτε σημεῖον πέραν τοῦ κατωτάτου σημείου τῆς ἐγκεκριμένης κλίμακος τῆς θέσεως των”.

And in English it reads:—

“ Though the Council considers that the Minister of Finance already has possessed the power referred to in the submission, nevertheless, in order to disperse any doubts, it decided to grant to the Minister of Finance the powers which he possessed regarding the emplacement of certain officers upon their appointment in the Service to any point above the lower point of the approved scale of their post” (*exhibit 4*).

It appears further from the contents of the same *exhibit* that this decision was necessitated because the Minister of Justice made a submission under No. 77/66 to the Council of Ministers, expressing the view that the Minister of Finance already possessed such power, in accordance with the provisions of the General Orders III/1.2(e) and that was confirmed to her orally by the Attorney-General of the Republic.

In order to understand what powers the Minister had under the General Orders, I must turn to the provisions of Order III/1.2, which reads:—

“ In fixing the point at which persons appointed to posts on the permanent establishment shall enter the salary scale credits in respect of unestablished or temporary monthly-paid service and war service may be granted as follows:—

(e) In accordance with General Order II/1.12 no officer may be appointed to a salary scale post at a salary

above the minimum without the permission of the Administrative Secretary. This applies equally when credits are granted”.

And also II/1.12 reads:—

“ The Governor may delegate his power of making appointments to Schedule A posts to the Establishment Secretary, and appointments to Schedule B posts to heads of departments, provided always –

(a) that the person selected is a Cypriot or is resident or serving in the Colony;.....”.

Apparently, the Minister acting under the aforesaid Decision No. 5361, granted increments to Chartered Accountants, first entrants in the Government service, in order to attract in the Service qualified accountants. This practice or policy was reconsidered by the Minister, after a submission made to him by the Director-General, on May 20, 1971. The Director-General after referring to the relevant material in the file (*exhibit 8 (a)*), suggested to the Minister that that practice should be terminated and had this to say in *exhibit 8*:—

“ It is further suggested that the practice of granting increments to first-appointed Chartered Accountants be terminated, because of the entrance in the Civil Service of sufficient Certified Accountants and other officers who study in order to acquire such diploma, and on the other hand, to avoid similar applications, as the case of the 3rd applicant (Red 36), so that we shall not reach at the same time the suggestion that can be found in paragraph 3 of minute 18. Perhaps in the future, additional increments may be granted to officers already in the service, who acquire additional qualifications, though this will require the approval of appropriate regulations”.

Then the Minister of Finance, having considered the contents adopted the said submission, and in a note in his own handwriting he wrote on May 24, 1971 on the same *exhibit 8 (a)* “I agree”, and no doubt by adopting it, it has become reasoning for his decision, that is to say, to stop the practice or policy of granting increments to firstly appointed Chartered Accountants in the service.

Having referred to the earlier power of the Minister to grant additional increments to both the serving officers and to first

entrants in the service, I shall revert to the letter of the applicant. There is no doubt that when the applicant wrote on September 13, 1971—about 4 months after the last decision of the Minister to terminate the policy referred to earlier—he did not point out whether his application to emplace him above his lower salary scale was based either on the contents of the circular (*exhibit 9*) or on the 1966 decision of the Council of Ministers, (*exhibit 4*). It is true of course, that the applicant in his letter made a specific reference that emplacements above the initial salary scale were authorised by the Ministry to certain accountants working in the treasury department, but, as I said earlier, no clear reference was made. Once, therefore, the Minister of Finance must have been aware that the applicant was already serving as an accounting officer in the treasury department, I have no doubt that the reply given to him was based on the contents of the decision of the Council of Ministers that no applications for additional increments should be entertained. The mere fact, of course that in the reply it was stated by the Director of the Personnel that in the past additional increments were granted to certain officers upon their first appointment, in my view, does not change the effect of the decision once the Minister knew that he had terminated the policy of granting increments to firstly appointed accountants, but the writer intended to inform the applicant that additional increments were granted on the first appointment in the public service. With this in mind, once the refusal of the Minister was based on the 1964 circular, I would be prepared to say that the Minister rightly exercised his powers to refuse to grant such increments and I would, therefore, dismiss the application on this issue. Indeed, I would go further and state that had the Minister exercised his discretion to grant to the applicant additional increments, he would have been acting contrary to the terms of *exhibit 4* and in excess or in abuse of his powers, because the Council of Ministers has not, since 1964, reviewed its decision to entertain applications for additional increments to all the serving officers.

But assuming that my decision is wrong, then the next question is whether the Minister acted in excess or abuse of his powers in not granting additional increments to the applicant.

Counsel on behalf of the applicant contended that the decision of the Council of Ministers (*exhibit 4*) simply reiterated that the Minister of Finance possessed the powers to grant



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additional increments, under the General Orders, to officers upon their appointment in the service; and that the word “appointment” should be given a wider meaning and not a restricted one.

I have said earlier that the decision of the Council of Ministers not to enterain additional increments, once it was not reviewed, remained operative. Of course, it goes without saying that if the Council of Ministers are of the view that the situation has improved, necessitating a change, it is for them to say so in clear and unambiguous language. Subject to this observation, I am of the view, that the decision of the Council of Ministers in 1966 had this effect: (1) To delegate their powers to the Minister of Finance; and (2) to reiterate that the said Minister was given qualified powers to grant to certain officers, upon their appointment in the service, additional increments.

There is no doubt that the Minister, after laying down certain criteria in the interest of the service, used his powers and granted additional increments to certain officers holding the qualification of Chartered Accountant on their first appointment in the service. Thus, we have it that the Minister himself construed the effect of that decision that his powers in granting additional increments should be exercised only in the case of the firstly appointed officers, in order to attract at that time, qualified Chartered Accountants, apparently because the department needed their services. As to what is the meaning of the word “appointment”, one can derive guidance from the provisions of s. 28 of the Public Service Law, 1967, (No. 33/67). “Appointment” means the conferment of an office upon a person not in the public service or the conferment upon an officer of an office other than that which he substantially holds, not being a promotion. But, with respect to the argument of counsel, one should always try, in discovering the meaning, to see what are the facts in the particular case. There is no doubt in the case in hand that the applicant, when he was appointed to the post in question (being a first entry and promotion post) there has been a change in the officer’s substantive status, which carries with it an increase in the officer’s remuneration and also his emplacement in a higher division of the public service. Therefore, in my opinion, if one reads the definition of what is a promotion in s. 28, one cannot but reach the conclusion that in spite of the fact that the Commission offered the applicant an appointment (not a promotion) which he accepted, I

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5 have no difficulty in saying that the offer made to him was a promotion, and, therefore, the contention of counsel on this issue, that is to say, that I should have given an extensive meaning to the word "appointment", fails. That this is so, I find further support from the case of *Shamassian and Others v. The Minister of Finance* (1973) 3 C.L.R. 341.

10 For the reasons I have endeavoured to advance, and once I have reached the view that the power of the Minister of Finance was to grant additional increments to certain officers on their first appointment only, and because the applicant was already in the service, I have reached the conclusion that the decision of the Minister was not taken contrary to the law or in excess or abuse of his powers.

15 Regarding the further complaint of counsel that the said decision is contrary to the provisions of Article 28 of the Constitution, and in that it discriminates against the applicant vis-a-vis the other officers of equal standing referred to earlier, and violates their right of equal treatment safeguarded thereunder, I think this principle of equality has been the subject of  
20 a number of judicial pronouncements, and I propose referring only to the case of *The Republic of Cyprus v. Nishian Arakian and Others* (1972) 3 C.L.R. 294. It has been clearly stated that it does not convey the notion of exact arithmetical equality, but it safeguards only against arbitrary differentiation, and it  
25 does not exclude reasonable distinctions which have to be made in view of intrinsic nature of things, and that the principle of equality is violated if the distinction has no objective and reasonable justification.

30 In the present case, as I have tried to show earlier, the Minister of Finance for the reasons already given in this judgment, has decided to stop the practice followed in granting additional increments to firstly appointed servants earlier, and once, therefore, the power was used for granting additional increments to firstly appointed officers, the applicant can hardly complain  
35 that there was discrimination towards him, being already a serving officer, and I would, therefore, dismiss this contention of counsel, that the principle of equality was violated, once the distinction was based on objective and reasonable justification.

40 The Order of the Court is, therefore, application dismissed with no order as to costs.

*Application dismissed.  
No order as to costs.*