

1978 November 2

[MALACHTOS, J.]

CLEOPAS KLEANTHIS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF LABOUR AND SOCIAL INSURANCE,

Respondent.

(Case No. 87/76).

Social Insurance—Disability pension—Sections 51 and 23 of the Social Insurance Law, 1972 (Law 106/72)—Whether occasional contribution by pensioner to some kind of work a reason for discontinuing disability pension.

- 5 *Administrative Law—Act contrary to Law—Discontinuance of disability pension—On the ground of contribution by pensioner to some kind of work—No provision in the Social Insurance Law, 1972 (Law 106/72) for discontinuance of disability pension on such*
10 *ground—In reaching decision complained of, respondent Minister acted contrary to Law and took into account immaterial factors—*
Sub judge decision annulled.

15 The applicant, a farmer, was receiving, as a self employed person, disability pension from the Social Insurance Department of the Ministry of Labour and Social Insurance, due to ill health, after being found by the Medical Board, constituted by virtue of section 51 of the Social Insurance Law, 1972 (Law 106/72), that he was incapable to do any work. The respondent discontinued the payment of disability pension to applicant as
20 from 1st September, 1975 on the ground that he was contributing to the carrying out of his business as a farmer by supervising the watering and the collection of the products from the garden of 1 1/2 donums in extent.

Following the dismissal of his hierarchical recourse to the respondent Minister under section 62 of the above Law, the

applicant filed the present recourse by means of which he contended:

- (a) That section 23 of Law 106/72 does not provide that contribution by the insured person to the carrying out of his business is a reason for which the grant of disability pension may be discontinued. 5
- (b) That even if such a reason was contained in the provisions of the Law there was a misconception of fact as the facts proved do not amount to a contribution in carrying out his business as a farmer. 10

Counsel for the respondent in addressing the Court agreed with the above contentions of counsel for the applicant.

Held, annulling the sub judice decision, that there is nothing in the law to the effect that if a person receiving disability pension contributes occasionally to some kind of work, it is a reason for which the disability pension should be discontinued; that on the facts proved, even if such a provision was contained in the law the applicant could in no way be considered as contributing to the carrying out of his work as a farmer, by just giving directions as to how the work should be carried out for the cultivation of a field of 1 1/2 donums in extent; that the Minister in reaching the decision complained of acted contrary to law and took into account immaterial factors; and that, accordingly, the *sub judice* decision will be declared *null and void*. 15 20

Sub judice decision annulled. 25

Recourse.

Recourse against the decision of the respondent whereby the disability pension received by applicant was discontinued.

A. Skordis, for the applicant.

R. Gavrielides, Counsel of the Republic, for the respondent. 30

Cur. adv. vult.

MALACHTOS J. read the following judgment. The applicant in this recourse claims a declaration of the Court that the act and/or decision of the respondent dated 12th January, 1976, by which the application of the applicant to grant to him disability pension, was rejected and/or by which the respondent 35

decided the discontinuance of granting to him disability pension, is *null* and *void* and of no effect whatsoever.

The facts of the case are shortly as follows:

5 The applicant, a farmer of Nata village, was receiving, as a self employed person, disability pension from the Social Insurance Department of the Ministry of Labour, due to ill health as from January 1973, after being found by the Medical Board constituted by virtue of section 51 of the Social Insurance Law, 1972 (Law 106/72), that he was incapable to do any work.

10 By letter dated 22nd November, 1975, *exhibit* 9, the Director of Social Insurance informed the applicant that the disability pension he was receiving had been discontinued as from 1st September, 1975, for the reason that the applicant was contributing to the carrying out of his business as a farmer. This decision of the Director was based on a report, *exhibit* 8, by a
15 District Inspector of the Labour Office who carried out an enquiry in the matter on the 15th October, 1975. This report reads as follows:

20 “ The applicant is the owner of fields of thirty donums in extent which have been uncultivated for the last 15 years. He also owns 1 1/2 donums of irrigated land in which 40 lemon trees are planted and he is also the owner of a field of two donums in extent, which is planted with almond trees. According to his allegations his income from his property is £10.- per year. The garden is cultivated by his
25 partner and as they both assured me the applicant contributes to the carrying out of the work only by supervising the watering and the collection of the products.

From the above facts I am of the view that the applicant contributes partly to the carrying out of his business.”

30 The applicant being dissatisfied with the decision of the Director contained in his letter of 22nd November, 1975, made on 4th December, 1975, presumably under section 62 of the Law, a hierarchical recourse to the Minister of Labour and Social Insurance.

35 The Minister after examination of the case issued the decision complained of, which is contained in a letter to the applicant dated 12th January, 1976, *exhibit* 11, and which reads as follows:

“ With reference to your letter dated 4th December, 1975, to the Honourable Minister of Labour and Social Insurance in connection with your claim for disability pension I have been instructed to inform you the following:

The Honourable Minister, after taking into account all the relevant facts in connection with your case, rejected your recourse to him, as from the enquiry carried out on 15th October, 1975, it has been ascertained that you contribute to the carrying out of your business. 5

Therefore, the decision communicated to you on 22/11/75 was rightly taken and cannot be reviewed. 10

If you are dissatisfied with the above decision you may file an appeal before the Court within 75 days as from today.”

Counsel for applicant submitted that section 23 of Law 106/72 does not provide that contribution by the insured person to the carrying out of his business is a reason for which the grant of disability pension may be discontinued. Since the applicant was once granted such pension, he submitted, it is obvious that at the material time he was eligible for such pension under the law. 15 20

It is clear from the reports of the Medical Board which were issued periodically to the applicant that no change has taken place since the first examination in the state of health of the applicant. The state of health of the applicant is described in the last report, *exhibit 5*, dated 9th October, 1975, as the same as in the first one and that he is unable to do any work. 25

Counsel for applicant also submitted that even if such a reason was contained in the provisions of the law, *i.e.* that the applicant contributed to the exercise of his business as a farmer, there is a misconception of facts as the facts proved do not amount to a contribution in carrying out his business as a farmer. 30

Counsel for the respondent in addressing the Court today, very rightly in my view, agreed with the submission of counsel for the applicant that on the facts of the case there are no valid reasons on the basis of which the respondent authority could 35

base the discontinuance of the disability pension of the applicant. There is nothing in the law to the effect that if a person receiving disability pension contributes occasionally to some kind of work, it is a reason for which the disability pension should be discontinued. He further agreed that on the facts proved, even if such a provision was contained in the law, the applicant could in no way be considered as contributing to the carrying out of his work as a farmer, by just giving directions as to how the work should be carried out for the cultivation of a field of 1 1/2 donums in extent.

It is clear from the above that the Minister in reaching the decision complained of acted contrary to Law and took into account immaterial factors.

Therefore, this Recourse succeeds and the decision of the respondent Authority to discontinue the disability pension of the applicant as from the 1st September, 1975, is declared *null and void*.

The respondent to pay £30.- against the costs of the applicant.

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