1981 November 14

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION.

VASSOS TSERIOTIS,

Applicant,

v.

THE MUNICIPALITY OF NICOSIA,

Respondent.

(*Case No.* 63/79).

Practice—Recourses—Consolidation—Principles applicable—Discretion of the Court—Recourses not involving a common question of law or fact of such importance in proportion to rest of the matter —And attacking two different administrative acts which took place at different times and under different circumstances—Preliminary objection raised on each recourse different—Application for consolidation dismissed—Rule 2 *of Order* 14 *of the Civil Procedure Rules applicable by virtue of rule* 18 *of the Supreme Constitutional Court Rules,* 1962.

The applicant has been in the service of the respondent Municipality since 1954; and he retired from such service on the 30th November, 1978 upon reaching the pensionable age of 60. By letter dated the 1st February, 1978 he asked the respondent that for pension purposes the latter should recognise applicant's 12 years of employment with the Improvement Board of Prodromos on the ground that this was promised to him by the then Mayor of Nicosia, Dr. Dervis. The respondent turned down this application and applicant by letter dated 15th April, 1978 applied for a reconsideration of the matter. The respondent rejected the application again and informed applicant accordingly by letter dated 21st, July 1978. Applicant applied by letter dated 23rd July, 1978 and asked for a reconsideration of his case once again. The respondent replied to applicant by letter dated the 30th November 1978, and informed him that it was not possible to approve his claim for the reasons

which were referred to in a previous letter dated 21st July, 1978. As a result applicant filed this recourse for a declaration of the Court that the act and/or decision of the respondent not to recognise his previous years of service with the Improvement Board of Prodromos for pension purposes, which was contained in its letter dated 30th November, 1978 was null and void and of no legal effect whatsoever.

The respondent Municipality in its opposition raised the objection that the letter of the 30th November, 1978 confirmed its decision which was communicated to the applicant by the letter dated 21st July, 1978 and, consequently, the recourse was out of time as it was not filed within the time limit of 75 days prescribed by Article 146.3 of the Constitution.

On the 3rd January, 1980, applicant addressed a letter* to the respondent and proposed to be paid compensation instead of pension as was done in the case of another Municipal employee. In reply to this letter counsel for the respondent by letter** dated 11th January, 1980, informed counsel for the applicant that the respondent does not accept applicant's claim but will wait the result of recourse No. 63/79.

As against this reply applicant filed recourse No. 26/80 on the 11th February, 1980.

The respondent Municipality in its opposition to the latter recourse raised the following two preliminary legal issues:-

(a) That respondent's counsel's letter dated 11.1.1980 does not constitute an administrative executory act or decision which can be the subject of a recourse. Same contained merely an information to applicant's counsel that respondent was not prepared to accept the proposal made by applicant in his letter dated 3.1.1980 for the settlement of recourse 63/79; and

(b) respondent further says that, even if respondent's counsel's letter dated 11.1.1980 contained any decision, which is denied, such decision was not an executory administrative decision but it was simply of a confirma-

* The letter is quoted at pp. 534–535 *post*.

** The letter is quoted at p. 535 *post*.

tory nature confirming the confirmatory decision, the subject-matter of recourse 63/79.

On February 27, 1980 the applicant applied for an order for consolidation of the above two recourses. The application was based on rule 18 of the Supreme Constitutional Court Rules, 1962 and on Order 14, rule 2 of the Civil Procedure Rules.

On the application for consolidation:

Held, that the Court has a discretion to consolidate pending actions; that the main purpose of consolidation is to save costs and time and, therefore, it will not usually be ordered unless there is some common question of law or fact bearing sufficient importance in proportion to the rest of the subject matter of the actions to render it desirable that the whole should be disposed of at the same time; that where this is the case actions may be consolidated where the plaintiffs are the same and the defendants are the same, or where the plaintiffs or defendants or all are different; that since the two recourses do not involve a common question of law or fact of such importance in proportion to the rest of the matters involved in such recourses as to render it desirable that they should be consolidated; that since they are attacking two different administrative acts or decisions which took place at different times and under different circumstances; and that since the preliminary objection raised in the first recourse is different than that of the other this Court in the exercise of its discretion has decided to dismiss the application for consolidation.

Application dismissed.

Cases referred to:

Helenslea [1882] 7 P.D. 57;

HjiAthanassiou v. *Parperides and Others* (1975) 1 C.L.R. 401 at p. 411.

Application.

Application for an order for the consolidation of recourses Nos. 63/79 and 26/80.

E. Vrachimi (*Mrs.*), for the applicant.

K. Michaelides, for the respondent.

Cur. adv. vult.

MALACHTOS J. read the following judgment. The applicant

in this recourse was appointed as a Municipal Market Inspector on or about 13.9.1954 on a temporary basis and as from 1.1.1955 his appointment became permanent according to the decision of the respondent taken at its meeting of 13.1.1955. The employment of the applicant came to an end on 30.11.1978 upon reaching the pensionable age of 60. By his letter dated 1.2.1978 the applicant asked the respondent that for pension purposes the latter should recognise applicant's 12 years of employment with the Improvement Board of Prodromos i.e. his service prior to his being employed with the respondent on the ground that this was promised to him by the then Mayor of Nicosia, Dr. Dervis.

In view of the fact that in the minutes of the meeting of the respondent Municipality of 13.1.1955, which is the only document concerning the appointment of the applicant, there is nothing to the effect that he was offered or accepted employment with the respondent on condition that the latter would recognise his previous employment for pension purposes, the respondent by its letter dated 4.4.1978 informed the applicant that his claim could not be accepted.

By a letter dated 15.4.1978 addressed to the respondent, the applicant challenged the correctness of the rejection of his claim and asked the respondent for its reconsideration.

The respondent at its meeting of 17.5.1978 considered the case of the applicant and rejected it again. This decision of the respondent was communicated to the applicant by a letter dated 21.7.1978. The applicant by his letter dated 23.7.1978 asked the respondent to reconsider his case once again as a result of which the respondent wrote the letter dated 30.11.1978. This letter reads as follows:

> "I have been instructed to refer to the correspondence ending with your letter dated 23rd July, 1978, in connection with your request that your claim for recognition of your years of service with the Improvement Board of Prodromos, be reconsidered anew by the Municipality, and to inform you that the Municipal Committee at its meeting of the 25th September, 1978, reconsidered your claim, in the light of your last letter, and decided afresh, having in mind the opinion of the legal advisers of the Municipality

on this subject, that it is not possible to approve your claim for the same reasons which are referred to in my letter under the same elements and dated 21st July, 1978".

As a result the applicant on 1.2.1979 filed the present recourse claiming a declaration of the Court that the act and/or decision of the respondent not to recognise his previous years of service with the Improvement Board of Prodromos for pension purposes, which is contained in its letter dated 30th November, 1978, is null and void and of no legal effect whatsoever and that whatever has been omitted should have been performed.

The respondent Municipality in its opposition, which was filed on 16.5.1979, besides the allegation that the decision complained of was lawfully taken raises the objection that the letter of 30.11.1978 confirms its decision of the 17.5.1978 which was communicated to the applicant on 21.7.1978 and, consequently, the recourse is out of time as it was not filed within the time limit of 75 days prescribed by Article 146.3 of the Constitution.

On 19.5.1979, at the directions stage of the recourse and on the application of counsel for applicant, it was directed that the respondent Municipality should make available for inspection the relevant file to counsel for applicant at least 15 days before the hearing and on the date of hearing, which hearing was fixed for the 25th October, 1979. As both counsel were engaged before the Appeal Court on that date, the hearing of this recourse was shifted on their application to the 15th January, 1980 and on that day on the application of counsel for applicant and with the consent of counsel for the respondent, the hearing was further adjourned to 12th April, 1980.

In the meantime, the applicant addressed a letter to the Chairman of the respondent Municipality dated 3rd January, 1980, which reads as follows:

"Since it recently came to my knowledge that the claim of the ex Town Clerk, Mr. G. Koutas, concerning his pension as regards a 16 year previous service of his with a private bank, which has been considered as not being able to succeed on the basis of the Municipal Corporations Law and the Municipal Corporation (Nicosia) Pensions and Gratuities Bye-Laws, has finally been satisfied after an opinion of the Attorney-General of the Republic by

granting to him the sum of £5,000.- by way of compensation instead of pension to which he was entitled, because of a relevant promise given to him by the Municipal Committee and since, as it is mentioned in my previous correspondence with you, such promise was also given to me as well in relation to my 12 years previous service with the Improvement Board of Prodromos, I wish to inform you that independently of my pending recourse before the Supreme Court and without harm or prejudice to it, I am willing to accept an alternative arrangement of a similar nature.

In view of this, I apply that an amount equal to the pension to which I would have been entitled be paid to me by computing together my service by way of compensation instead of pension".

In reply to the above letter of the applicant the following letter dated 11th January, 1980, was addressed by counsel for the respondent to counsel for applicant:

"Dear Colleague,

Subject: Recourse No. 63/79 Vassos Tseriotis v. Nicosia *Municipality*

"I wish to refer to the letter dated 3.1.1980 addressed by your client Mr. V. Tseriotis to the Nicosia Municipality by which he claims from the Municipal Corporation of Nicosia that instead of pension be paid to him a sum equal to such pension by way of compensation and to inform you that the Municipal Corporation of Nicosia does not accept his claim but will wait the result of the above recourse".

On the 11th February, 1980, the applicant filed recourse No. 26/80 claiming a declaration of the Court that the act and/or decision of the respondent contained in the letter of Mr. K. Michaelides dated 11.1.1980, by which the respondent did not accept the claim of the applicant to pay him a sum equal to the pension which he would have been entitled by calculation of his previous service by way of compensation, in lieu of pension, is null and void and of no legal effect whatsoever and anything that was omitted ought to have been performed.

This recourse, as it appears from the file, was served on the respondent Municipality on the 20th February, 1980. On the 27th February, 1980, and before the directions stage of this new recourse, the applicant filed by summons in Recourse No. 63/79 the present application for an Order of the Court for consolidation of the two recourses. The application was opposed and so it was fixed for hearing on 12.4.1980.

On 12.4.1980 the opposition to recourse No. 26/80 was filed where the respondent Municipality, besides opposing the claim of the applicant on its merits, raised the following two preliminary legal issues:

(a) Respondent's counsel's letter dated 11.1.1980 does not constitute an administrative executory act or decision which can be the subject of a recourse. Same contained merely an information to applicant's counsel that respondent was not prepared to accept the proposal made by applicant in his letter dated 3.1.1980 for the settlement of recourse 63/79; and

(b) Respondent further says that, even if respondent's counsel's letter dated 11.1.1980 contained any decision, which is denied, such decision is not an executory administrative decision but it is simply of a confirmatory nature confirming the confirmatory decision, the subject-matter of recourse 63/79.

The application for consolidation, as stated therein, is based on rule 18 of the Supreme Constitutional Court Rules 1962, which provides that the Civil Procedure Rules in force in the Republic on the date of the making of these rules shall apply mutatis mutandis to all proceedings before the Court so far as the circumstances permit, or unless other provision has been made by these rules or unless the Court or any Judge otherwise directs. As there is no provision in the Supreme Constitutional Court Rules as regards consolidation of recourses, the relevant provision of our Civil Procedure Rules, Order 14, rule 2, applies. This rule reads as follows:

"2. When two or more actions are pending in the same Court, whether by the same or different plaintiffs against the same or different defendants, and the claims of such actions involve a common question of law or fact of such

importance in proportion tc the rest of the matters involved in such actions as to render it desirable that the actions should be consolidated, the Court or a Judge may order that they be consolidated".

This Order corresponds to Order 4 rule 10 of the Rules of the Supreme Court in England, which is as follows:

"0.4 r. 10. Where two or more causes or matters are pending in the same Division, then, if it appears to the Court–

(a) that some common question of law or fact arises in both or all of them, or

(b) that the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions, or

(c) that for some other reason it is desirable to make an order under this rule,

the Court may order those causes or matters to be consolidated on such terms as it thinks just or may order them to be tried at the same time or one immediately after another or may order any of them to be stayed until after the determination of any other of them".

This Order was taken from the Rules of the Supreme Court (Rev.) 1962, Order 4, rule 10, which was new but replaced the former Order 49, rule 8, which had only provided that the practice of the Superior Common Law Courts before 1875 should continue. The new rule does not change the practice. The effect of the new rule is that there is a discretion to consolidate pending actions, that is to say actions in which the writ has been served and in which judgment has not yet been obtained and satisfied. (See *Helenslea* [1882], 7 P.D. 57).

The main purpose of consolidation is to save costs and time and, therefore, it will not usually be ordered unless there is some common question of law or fact bearing sufficient importance in proportion to the rest of the subject matter of the actions to render it desirable that the whole should be disposed of at the same time. Where this is the case, actions may be consolidated where the plaintiffs are the same and the

defendants are the same, or where the plaintiffs or defendants or all different. The circumstances in which actions may be consolidated are, therefore, generally similar to those in which parties may be joined in one action. There may, however, be further circumstances which will militate against an order being made.

The leading case on the question of consolidation of actions in Cyprus is the case of *Georghios HjiAthanassiou* v. *Loizos Parperides and Others* (1975) 1 C.L.R. 401. In that case most of the relevant English authorities were reviewed and the Appeal Court had this to say at page 411:

> "Having reviewed the authorities as to consolidation of actions, we think that although the Judge has a discretion to order consolidation or refuse it, nevertheless, no clear principle is to be gathered from the reported cases, and we find ourselves in agreement with the Judge that the *Healey* case is not a good precedent laying down the considerations which should be borne in mind or those which should be ignored by the Judge in exercising his discretion; and not a good guide for the present case when the Judge refused to grant an order for consolidation and has given reasons which enable this Court to know the considerations which have weighed with him. We, would, therefore, dismiss this contention of counsel as we are also of the view that the Judge did not misconceive the effect of the *Healey* case".

I have considered the arguments of both counsel in the light of the above authorities and in exercising my discretion I have decided to dismiss the application for consolidation of the two recourses for the following reasons:

1. The two recourses do not involve a common question of law or fact of such importance in proportion to the rest of the matters involved in such recourses as to render it desirable that they should be consolidated.

2. They are attacking two different administrative acts or decisions which took place at different times and under different circumstances, and

3. The preliminary objection raised in the first recourse is different than that of the other. In Recourse No.

63/79 the objection is that this recourse is out of time whereas in Recourse No. 26/80 the objection is that the letter of the 11th January, 1980, addressed to counsel for applicant by counsel for the respondent, does not constitute an administrative act or decision which can be the subject matter of a recourse under Article 146 of the Constitution.

In the result, the application for consolidation is dismissed.

The respondent Municipality is entitled to the costs of this application, to be assessed at a later stage.

Application dismissed.