

1982 March 30

[TRIANTAFYLIDIS, P., L. LOIZOU, HADJIANASTASSIOU,
A. LOIZOU, DEMETRIADES, JJ.]

MARIA TOMBOLI,

Appellant,

v.

THE CYPRUS TELECOMMUNICATIONS AUTHORITY,

Respondent.

(Revisional Jurisdiction Appeal No. 229).

5 *Legitimate interest—Article 146.2 of the Constitution—Free and unreserved acceptance of an administrative act or decision deprives the acceptor of a legitimate interest entitling him to make an administrative recourse against such act or decision—Unreserved acceptance by applicant of Regulations, made by respondent, governing her retirement age—Deprives her of legitimate interest in the sense of the said Article 146.2, to challenge the decision of the respondent to give effect to the provisions of such Regulations and terminate her employment in accordance thereto.*

10 In exercise of its powers under section 42 of the Inland Telecommunications Service Law, Cap 302 the respondent Authority made the Telecommunication Services (Pensions and Allowances to the Employees of the Authority) Regulations of 1975
15 and the Telecommunication Services (Provident Fund for Allowances to the Employees of the Authority) Regulations of 1975 which were published in the Official Gazette of the 31st May, 1976.

20 Under the provisions of the above Regulations, the retirement age of the employees of the Authority was fixed, in the case of male employees, as the 60th year and that of female employees as the 55th year of their respective age. The said Regulations, both in respect of Pensions and also of the Provident Fund, were

communicated to the employees of the Authority, soon after their publication in the Gazette, and the employees were invited to make their option and communicate same to the Personnel Manager of the Authority by written notice, specimen of which was sent with such letter.

5

In reply to the said communication the applicant, who was in the employment of the Authority, adopting the specimen sent to her, by letter* dated 24.6.1976 acknowledged her option to join the Pension Fund.

By letter dated the 30th October, 1978 the respondent Authority informed applicant that as she would complete her 55th year of age on the 30th November, 1978, she was to retire from the service of the Authority as from the 1st December, 1978.

10

The trial Judge dismissed the recourse of the applicant against the validity of the decision contained in the above letter on the ground that the acceptance by her without any reservation on her part, of the sub judice decision of the respondent Authority, has deprived her of the possibility of satisfying the Court that she possessed an existing legitimate interest in the sense of Article 146.2 of the Constitution and consequently she deprived herself of the right to challenge the said decision. Hence this appeal.

15

20

Held, that a person who unreservedly and freely accepts an act or decision of the administration, is deprived, because of such acceptance, of a legitimate interest entitling him to make an administrative recourse for the annulment of such act or decision; that in the circumstances the acceptance of the applicant was free and without any reservations; and that, therefore, she has been deprived of a legitimate interest entitling her to make a recourse for the annulment of the decision complained of; accordingly the appeal should be dismissed.

25

30

Appeal dismissed.

* The said letter read as follows:

"I have the honour to inform you that I wish to join the (I) Pension Fund.

I declare that I received a copy of the Regulations made by the Authority and I realise that from the moment I become a member of the above Fund, I am bound in every respect by its Regulations.

(I) To be completed according to the option: Pension fund or provident fund".

Cases referred to:

- Piperis v. Republic* (1967) 3 C.L.R. 295 at p. 298;
Ioannou and Others v. Republic (1968) 3 C.L.R. 146 at p. 153;
Ioannou v. The Grain Commission (1968) 3 C.L.R. 612 at p. 617;
 5 *Markou v. Republic* (1968) 3 C.L.R. 267 at p. 276;
Myrianthis v. Republic (1977) 3 C.L.R. 165;
Ionides v. Republic (1979) 3 C.L.R. 679.

Appeal.

10 Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Savvides, J.) given on the 6th June, 1980 (Revisional Jurisdiction Case No. 24/79) whereby appellant's recourse against the decision of the respondent to terminate her services upon the completion of her 55th year of age was dismissed.

- 15 *G. Arestis*, for the appellant.
A. HadjiIoannou, for the respondent.

Cur. adv. vult.

20 A. LOIZOU J. read the following judgment of the Court. This is an appeal from the judgment* of a Judge of this Court, by which he dismissed the recourse of the applicant now the appellant, on the ground that her acceptance without any reservation on her part, of the sub judice decision of the respondent Authority, has deprived her of the possibility of satisfying the Court that she possessed an existing legitimate interest in the sense
 25 of Article 146.2 of the Constitution and consequently she deprived herself of the right to challenge the said decision.

The appellant was as from the 1st January 1944 an employee of the Cable and Wireless Ltd., which was taken over as from
 30 the 1st July 1956 by the respondent Authority, established by the Inland Telecommunications Service Law, Cap. 302 (hereinafter to be referred to as the Law). Together with other officers employed on the staff of the Cable and Wireless Ltd., she was transferred as from the aforesaid latter date and became an officer of the respondent Authority by virtue of the provisions
 35 of section 28(1) of the Law. Under the then existing arrange-

* Reported in (1980) 3 C.L.R. p. 266.

ments the retiring age of female employees was that of 55, with an option of retirement at 50, and for male employees that of 60, with an option of retirement at 55 years of age. The pension rights of all employees were contained in what is described as "Draft Pension Fund" (exhibit E) which regulates the retirement of all officers until the establishment of the Fund under the regulations recently made by the respondent Authority, to which we shall refer shortly. It was described as "draft" but was acted upon for many years, because there were other matters for which no agreement had been reached between the respondent Authority and the Trade Unions, but its description as a "draft" does not take away its effect.

In exercise of the powers vested in the respondent Authority under section 42 of the Law to make regulations the following regulations were made, published in Supplement No. 3 to the Official Gazette of the Republic No. 1276 of the 31st May, 1976.

"(a) Under Notification 92: The Telecommunication Service (Pensions and Allowances to the Employees of the Authority) Regulations of 1975, and (b) Under Notification 93: The Telecommunication Service (Provident Fund for Allowances to the Employees of the Authority) Regulations of 1975".

Under the provisions of both the aforesaid regulations, the retirement age of the employees was fixed, in the case of male employees at their 60th year and that of female employees at their 55th year of their respective age. Under the aforesaid regulations which were communicated to the employees of the respondent Authority, soon after their publication in the Gazette, by a letter dated 5th June 1976, (exhibit 1) there were established a Pension Fund and a Provident Fund. We shall refer to the contents of the said letter as they are of significance to the issues raised in this appeal. It reads:

"TO ALL EMPLOYEES

- 1) *Pension Fund.*
- 2) *Provident Fund.*

It is brought to the knowledge of all the staff that the Authority in the exercise of the powers vested in her by

5 Section 42 of the Telecommunication's Services Law and with the approval of the Council of Ministers issued the regulations of the Pension and Provident Fund, which were agreed with the Trade Union, which on the basis of the issued regulations will be referred to as

(a) The Telecommunication Services (Pensions and Allowances to the employees of the Authority), Regulations of 1975, and

10 (b) The Telecommunication Services (Provident Fund for Allowances to the Employees of the Authority) Regulations of 1975.

15 To all the permanent staff of the Authority will be distributed a copy of the said Regulations for the purpose of, until the 10th July 1976, the latest, exercise the right of option to join one of the two Funds.

For the purpose the staff must send a relevant notice to the Director of Personnel, as per the attached specimen (I) and to bear in mind that such communication (exercise of the right of pension) will not be possible to be revoked".

20 In reply to the said communication and adopting the said specimen sent to her, the applicant acknowledged by letter dated the 24th June 1976 her intention to join the Pension Fund. It is addressed to the Personnel Manager through the head of the Larnaca District Services, and as far as material to these proceedings it reads as follows:

"I have the honour to inform you that I wish to join the *Pension Fund.

30 I declare that I have received a copy of the Regulations made by the Authority and I realise that from the moment I become a member of the above Fund, I am bound in every respect by its regulations.

Signature Maria Tomboli

Witness

Name and Surname of witness.

35 Andros K. Zantis

Signature of witness

*To be filled in, according to the option:
Pension Fund or Provident Fund”).

The respondent Authority, by their letter of the 30th October 1978 informed the appellant that she was to retire from the service of the Authority as from the 1st December 1978, upon the completion of her 55th year of age on the 30th November 1978. The appellant through her advocates, by letter dated 20th November 1978 questioned the validity of the decision of the respondent Authority and refused to receive any benefits as a pensioner.

The learned trial Judge in his judgment dealt first with the question as to whether the appellant had a legitimate interest to pursue the proceedings or whether she had lost same as a result of her unconditional acceptance of the Regulations embodied in such provision. Before dealing with the Law governing the issue he had this to say at p. 277 of the report:

“It is an undisputed fact that the letter of the respondent Authority dated 30th November, 1978 whereby applicant was notified that her services were terminated on the completion of her 55th year of age, the validity of which is attacked, and the authority by virtue of which such letter was sent, are based on the Regulations published under Notification 92 referred to earlier in this judgment. Such Regulations were promulgated by the respondent Authority in compliance with statutory provisions and communicated to the applicant who, after perusing them, as it appears in letter (exhibit 2) accepted them without any reservation”.

After referring to the cases of *Piperis v. The Republic* (1967) 3 C.L.R. 295 at p. 298; *Ioannou and others v. The Republic* (1968) 3 C.L.R. 146 at p. 153; *Costas Ioannou v. The Grain Commission* (1968) 3 C.L.R. 612 at p. 617; *Markou v. The Republic* (1968) 3 C.L.R. 267, at p. 276, and the Authorities in the Conclusions from the Jurisprudence of the Greek Council of State (1929–1959) pp. 260 and 261, he quoted a relevant passage from p. 168 of what was said by Triantafyllides, P., in the case of *Myrianthis v. The Republic* (1977) 3 C.L.R. 165 which contains the relevant position on the subject. It reads:

“It is well established, by now, in the administrative law

of Cyprus, on the basis of relevant principles which have been expounded in Greece in relation to a legislative provision there (section 48 of Law 3713/1928) which corresponds to our Article 146(2) above, that a person, who expressly or impliedly, accepts an act or decision of the administration, is deprived, because of such acceptance, of a legitimate interest entitling him to make an administrative recourse for the annulment of such act or decision”.

With regard to an express reservation of rights reference may be made also to the judgment of the Full Bench in *N. Ionides v. The Republic* (1979) 3 C.L.R. 679.

The issue for determination in this appeal is whether the appellant has unreservedly and freely accepted the subject decision or not. In our view the appellant’s assent to the sub judice decision was expressed clearly, distinctly and by unambiguous words and conduct from which it can safely be inferred that there was the necessary intention to assent to such a decision. It was freely exercised and this is apparent not only from the fact that the relevant Regulations were brought to her knowledge and were explicit on the question of the retiring age, but also from the wording of the contents of her written acceptance of same and the exercise of choice she made thereby. Moreover her free acceptance of the retiring age emanates from the fact that the retirement age at 55 pre-existed the said Regulations and if she wanted to contest the constitutionality or legality of that question, that was the moment to make her reservation with regard to the retiring age limit. In her said acceptance it is clearly stated that she was given a copy of the Regulations and that she understood that she was bound in all respects by the said Regulations. Moreover the said Regulations and their contents could not but have been a matter of discussion among the employees, once in exhibit 1 the letter of the 5th June 1976, it is stated that these Regulations were agreed between the Authority and the employees’ Trade Union. We cannot but in the circumstances consider that the acceptance of the applicant was free and without any reservations as we must give effect to the rightness and the conduct of people and that they mean what they state therein.

It is unfortunate that the important issue of discrimination

on the ground of sex, raised under Article 28.1 of the Constitution, regarding the difference in the retirement age between male and female employees cannot be dealt with in view of the outcome of this appeal on the ground that there did not exist legitimate interest on the part of the appellant. 5

For all the above reasons the appeal is dismissed and the judgment of the learned trial Judge is hereby confirmed. In the circumstances, however, we make no order as to costs.

Appeal dismissed. No order as to costs. 10