

1983 November 5

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

YIANNAKIS POTAMITIS,

Applicant.

v.

THE WATER BOARD OF LIMASSOL,

Respondents.

(Case No. 469/81).

Act or decision in the sense of Article 146.1 of the Constitution—
Executory act—Water Board—Public utility corporation estab-
lished under the Water Supply (Municipal and Other Areas)
Law, Cap. 350—Its actions relating to its employees come
5 within the domain of public Law—They are of an executory Admi-
nistrative nature and can be made the subject of a recourse under
the above Article.

Water Board—Manager of—Termination of services—Proviso to
s. 14 of the Water Supply (Municipal and Other Areas) Law,
10 Cap. 350.

The respondent is a public utility corporation established
by virtue of the Water Supply (Municipal and Other Areas)
Law, Cap. 350, which makes provision for the establishment
of Boards named Water Boards, the powers and duties of which
15 are the control and management of water supplies in municipal
and other areas of the Republic.

The applicant was appointed to the post of Manager of the
respondents as from the 1st November, 1958, after having
accepted an offer made to him by them. Neither Cap. 350
20 nor any Regulations made thereunder provided what was the
retiring age of officers and servants of the Board, but under
the proviso to s. 14 of the Law, such servants and officers are
to hold office during the pleasure of the Board.

The respondents at their meeting of the 6th December 1978 decided

- (1) to ask the opinion of their legal adviser as to what was the retiring age of the Manager and that if his opinion was to the effect that there was no fixed retiring age, ask the applicant to continue his services 'aproskoptos'; 5
- (2) that if the opinion given was that the retiring age of the Manager was 60, he was to be given a two years' extension of service (which was granted by the same decision).

On the 14th February, 1979, the Board considered the opinion of their legal adviser which was to the effect that no retiring age was envisaged for the Manager and as a result they unanimously decided that in no case an employee would be allowed to serve after the completion of the age of 65. 10

On the 30th November, 1981 the Board decided to terminate applicant's services as from the 28th February, 1982 and hence this recourse. 15

On the question whether

- (a) The sub judice decision was of an executory administrative nature; 20
- (b) The recourse was out of time;
- (c) The merits of the recourse.

Held, (1) that since the respondents are a body established under Cap. 350 which entrusts it with the duties and powers of the control and management of the water supplies in the municipal area of the town of Limassol, it is a body corporate which has been created for rendering services to the public and their relation with and their actions relating to their employees come within the domain of public law, like those of any other public utility corporation rendering services to the public; that any decision, therefore, of the respondents relating to their employees, is of an executory or administrative nature and, therefore, can be made the subject of a recourse before this Court under Article 146.1 of the Constitution of the Republic. 25 30

- (2) That the decision reached by the respondents on the 6th 35

December, 1978, with regard to the applicant, is that he was not, as of right, entitled to retire at the age of 65 and, hence, they decided to "extend his services for two years"; that it was that decision of the respondents that had to be made the subject of a recourse and not their decision not to extend his services with them after the 28th February, 1982; and that, therefore, the applicant's recourse was filed out of time and it must, therefore, be dismissed.

(3) *On the merits of the recourse (assuming that the finding that the recourse was filed out of time is wrong).*

That considering the decision of the respondents which was to the effect that no employee of theirs was to be allowed to serve after attaining the age of 65 in the light of the provisions of the proviso to s. 14 of Cap. 350, the respondents were entitled to terminate the services of the applicant when they did so (subject, of course to his rights under the Pensions and Gratuities Scheme of the respondents); accordingly the recourse should fail.

Application dismissed.

20 Recourse.

Recourse against the decision of the respondent to terminate the services of the applicant and/or retire him on the 28th February, 1982.

Y. Potamitis with A. Triantafyllides, for the applicant.
 25 *St. Mc Bride, for the respondent.*

Cur. adv. vult.

DEMETRIADES J. read the following judgment. By the present recourse the applicant prays for a declaration that the decision of the respondents to terminate his service with them and/or to retire him on the 28th February, 1982, is null and void and of no effect whatsoever.

The applicant based his application on two grounds of law, namely—

1. The decision complained of is in excess or abuse of powers in that in accordance with the appointment of the applicant no date of retirement is prescribed. Accordingly, it is submitted that applicant must be kept in service so long as he can perform his duties satisfactorily.

2. Alternatively, by a recent decision of the respondents, employees of respondents can remain until the 65th year of their age so applicant's retirement is premature.

The respondents opposed the application on the following grounds of law—

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1. This Court has no jurisdiction to entertain this recourse/application as the alleged decision or act complained of is a matter within the domain of private law and does not amount to an act or decision in the sense of paragraph 146.1 of the Constitution.

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2. The Court which has exclusive jurisdiction regarding the type of matters complained of is the Industrial Disputes Court or having made election under section 30 of the Law as amended by section 3 of Law 6/73 the District Court and not this Honourable Court.

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3. In any event, in terminating the services of the applicant the respondent neither exceeded nor abused its undoubted right not to re-new the services of the applicant after 28.2.1982.

The respondents is a public utility corporation established by virtue of the Water Supply (Municipal and Other Areas) Law, Cap. 350, which makes provision for the establishment of Boards named Water Boards, the powers and duties of which are the control and management of water supplies in municipal and other areas of the Republic.

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The applicant was appointed to the post of Manager of the respondents as from the 1st November, 1958, after having accepted an offer made to him by them. The terms of the offer made to the applicant are contained in a letter signed by the then Chairman of the Board and addressed to him, dated the 20th September, 1958, which, amongst others, provided:—

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“(i)

(ii) The post is permanent and pensionable and the salary will be £1,236X42-£1,404X48-£1,548 plus cost of living allowance on the conditions and at the rates approved for Government Officers from time to time. You will enter the scale at £1,320 per annum.

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- (iii)
 (iv)
 (v)
 (vi)
 (vii) *Pension and Gratuity.*

5 You will be eligible for pension or gratuity in accordance with the Pensions and Gratuity Scheme adopted by the Board and approved by His Excellency the Governor.

10 Should you at any time during your service become physically unfit to discharge your duties efficiently, the Board may retire you. Upon such retirement, the Board may award to you such pension and/or gratuity as is payable under the Regulations of the Board in force at the time of your retirement.

(viii) ”

15 At the time the offer was made by the respondents and was accepted by the applicant, no Pensions and Gratuity Scheme was in force as none had been adopted by the Board. Neither Cap. 350 nor any Regulations made thereunder provided what was the retiring age of officers and servants of the Board, but by the proviso to s.14 of the Law, such servants and officers are to hold office during the pleasure of the Board.

20 Further, there is no provision in the Law about the period for which an officer or servant has to serve in order to be entitled to pension.

It is an admitted fact that the applicant, during all the years he was employed by the respondents, had given them faithful and a most excellent service.

25 As a result of representations made by the Trade Unions with regard to the compulsory retirement age of employees of the respondents and, in particular, of the applicant, the respondents, at their meeting of the 6th December, 1978, after taking into account—

30 (a) that their Pensions and Gratuities Scheme (which was approved by the then Colonial Secretary on 23.4.1953

—see exhibit No. ‘L’ in the bundle of documents produced by the respondents) did not provide for compulsory retirement of the applicant at the age of 60 or any other age, and

- (b) that the agreement reached between the Board and the Trade Unions regarding retirement age did not apply to the applicant, as he was not a party to the said agreement (the applicant had not joined the Trade Union), because he was not asked to accept the said agreement, nor did he accept the agreement and because at the time he was appointed the said agreement did not exist,

unanimously decided—

- (1) to ask the opinion of their legal adviser as to what was the retiring age of the Manager and that if his opinion was to the effect that there was no fixed retiring age, to ask the applicant to continue his services ‘aproskoptos’;
- (2) that if the opinion given was that the retiring age of the Manager was 60, he was to be given a two years’ extension of service (which was granted by the same decision).

In the minutes of this meeting, which are exhibit ‘A’ in the bundle of documents filed by the respondents, it is stated that independently of the above decision of the Board, the applicant was given the choice of joining the Provident Fund, in which case he was to continue to serve ‘aproskoptos’ till he attained the age of 65. At this same meeting the respondents further decided that the service of the applicant was to be in any event extended for a further period of two years.

On the 14th February, 1979, the Board considered the opinion of their legal adviser which was to the effect that no retiring age was envisaged for the Manager and as a result they unanimously decided that in no case an employee would be allowed to serve after the completion of the age of 65.

At their meeting of the 23rd October, 1980, the Board extended the services of the applicant for a further year.

From the minutes of the Board, which are exhibit ‘E’ in the bundle of documents produced, it is clear that the first extension

of the service of the applicant, that is the one for two years, ended on the 28th February, 1981 and that the last extension ended on the 28th February, 1982.

5 It is pertinent to say here that the applicant accepted both extensions of his service conditionally, always claiming that on the strength of the advice given to the Board by their legal adviser, he was entitled to remain in the service till he attained the age of 65. He further reserved his rights to sue the Board for damages.

10 As it appears from the documents produced, the Board was under pressure from the Trade Unions to which they finally yielded to terminate the services of the applicant and on the 30th November, 1981, the Chairman of the Board (who, by his letter dated 24th July, 1981—which was produced and is exhibit
15 No. 1—was telling the Director-General of the Ministry of Interior that the applicant held his post on the unanimous wish of all the members of the Board, because his services were considered by them absolutely necessary in the public interest) wrote to the applicant a letter by which he informed him that
20 his services were to be terminated as from 28.2.1982.

Learned counsel for the respondents submitted that the applicant was appointed “contractually” by virtue of the terms set out in the letter containing same (exhibit No. 2 to the petition); that the dispute between the parties falls within the
25 domain of private and not of public law and that this Court has no jurisdiction in the matter.

As I have said earlier, the respondents are a body established under Cap. 350 which entrusts it with the duties and powers of the control and management of the water supplies in the
30 municipal area of the town of Limassol. It is, therefore, a body corporate which has been created for rendering services to the public and their relation with and their actions relating to their employees come within the domain of public law, like those of any other public utility corporation rendering services
35 to the public. Any decision, therefore, of the respondents relating to their employees, is, in my view, of an executory or administrative nature and, therefore, can be made the subject

of a recourse before this Court under Article 146.1 of the Constitution of the Republic.

Before proceeding to deal with any other matter that calls for decision in this case, I feel that it is my duty, in view of—

(a) the nature of the proceedings before the Supreme Court in its revisional jurisdiction, and 5

(b) the contents of the documentary evidence before me, to decide whether this recourse was filed within the time provided by Article 146.3 of the Constitution which reads as follows: 10

“Such a recourse shall be made within seventy-five days of the date when the decision or act was published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse”. 15

The complaint of the applicant, as this appears from his application, is that the decision of the respondents to terminate his service with them, and/or to retire him on the 28th February, 1982, is null and void and of no effect. In fact his real complaint is that by their decision the respondents had decided that he was not entitled to be employed by them till he attained the age of 65. 20

From the documents that were produced during the hearing of the recourse, it is abundantly clear that the decision reached by the respondents on the 6th December, 1978, with regard to the applicant, is that he was not, as of right, entitled to retire at the age of 65 and, hence, they decided to “extend his services for two years”. In my view, it was that decision of the respondents that had to be made the subject of a recourse and not their decision not to extend his services with them after the 28th February, 1982. 25 30

In the light of the above, I find that the applicant’s recourse was filed out of time and it must, therefore, be dismissed.

Assuming, however, that my finding that the recourse of the applicant was filed out of time is wrong, I shall proceed to deal with another issue, that is to say whether it was open to the 35

respondents to reach the sub judice decision by which the applicant's services were terminated as from the 28th February, 1982.

5 In dealing with the facts of the case, I have made reference to the decision of the respondents to seek legal advice as to the retiring age of their employees and the decision reached by them on the 14th February, 1979, as a result of same, which was to the effect that no employee of theirs was to be allowed to serve after attaining the age of 65.

10 Considering the above and in the light of the provisions of the proviso to s. 14 of Cap. 350, to which I have referred earlier, I find that the respondents were entitled to terminate the services of the applicant when they did so (subject, of course, to his rights under the Pensions and Gratuities Scheme of the
15 respondents).

The recourse of the applicant is, therefore, dismissed.

There will be no order as to costs.

*Recourse dismissed with no order
as to costs.*