

CASES
DECIDED BY
THE SUPREME COURT OF CYPRUS
ON APPEAL
AND
IN ITS ORIGINAL JURISDICTION.

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[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

VASSOS TSERIOTIS,

Applicant.

v.

THE MUNICIPALITY OF NICOSIA,

Respondent.

(Case No. 26/80).

Administrative Law—Administrative acts or decisions—Executory act—Confirmatory act—Informatory act—Letter by respondent's Counsel to applicant's Counsel rejecting latter's proposal for settlement of a pending recourse—Not an executory act or decision which can be made the subject of a recourse under Article 146 of the Constitution but is merely of an informative nature—But

even if the letter contained any decision such decision a confirmatory one confirming the subject-matter of the said pending recourse.

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1 *Costs—Recourse for annulment—Unsuccessful applicant—Ordered to pay the costs of the respondent.*

By means of a letter dated 1st February, 1978 the applicant applied to the respondents that they should recognise for pension

purposes his twelve years previous service with the Improvement Board of Prodomos on the ground that this was promised to him by the then Mayor of Nicosia. The respondents rejected applicant's claim by letter dated 4th April 1978 and applicant by his letter of the 15th April 1978 applied for reconsideration of the rejection of his claim by referring to the case of another officer, without naming him, whose sixteen years previous service with a bank had been recognised for pension purposes. The respondents rejected again applicant's claim and informed him of the rejection by letter dated 21st July, 1978. The applicant applied again on the 23rd July, 1978 asking for a reconsideration of his case and referred by name to Mr. Koutas as the case of the officer whose previous service had been recognised. The respondents replied by their letter of the 30th November, 1978 and informed applicant that they "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 our letter under the same elements and dated 21st July, 1978".

As against this reply applicant filed recourse 63/79 on the 1st February, 1979. On the 3rd January, 1980, and whilst recourse 63/79 was still pending applicant's counsel addressed a letter to the respondents requesting that a sum equal to the pension to which applicant would have been entitled be paid to him by way of compensation. In reply respondent's counsel by letter dated 11th January, informed applicant's counsel "that the Municipal Corporation of Nicosia does not accept his claim but will wait the result of the above recourse" (No. 63/79). Hence the present recourse.

Counsel for the respondent raised the following preliminary objection.

- “(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".

5 *On the preliminary objection:*

Held, that the letter dated 11th January, 1980, to counsel for applicant, does not constitute an administrative executory act or decision which can be the subject of a recourse under Article 146 of the Constitution, but it is merely of an infor-
10 matory nature that the respondent Municipality was not prepared to accept the proposal made by the applicant in his letter dated 3rd January, 1980, for settlement of Recourse No. 63/79.

Held, further, (1) that even if it is accepted that the letter of
15 counsel for the respondent dated 11th January, 1980, contained any decision, such decision was a confirmatory one, confirming the confirmatory decision, the subject matter of Recourse 63/79; accordingly the recourse must fail.

 (2) That taking into consideration the facts and circum-
20 stances of this case, costs should be awarded in favour of the respondent Municipality and so an order is made accordingly.

Application dismissed.

Recourse.

 Recourse against the decision of the respondent whereby
25 applicant's claim for the payment to him of a sum equal to the pension which he would have been entitled by calculation of his previous service by way of compensation was refused.

L. Papaphilippou, for the applicant.

K. Michaelides, for the respondent.

Cur. adv. vult.

30 MALACHTOS J. read the following judgment. The applicant in this recourse claims, as stated therein, 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
35 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.

The relevant facts are as follows:

The applicant was appointed as a Municipal Market Inspector 5
on or about 13.9.54 on a temporary basis and as from 1.1.55 his
appointment became permanent according to the decision of the
respondent taken at its meeting of 13.1.55. The employment of
the applicant came to an end on 30.11.1978 upon reaching the 10
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 Improve-
ment Board of Prodromos i.e. his service prior to his being
employed with the respondent on the ground that this was 15
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 13.1.55, 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 20
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 letter dated 15th April, 1978, addressed to the respondent,
the applicant challenged the correctness of the rejection of his 25
claim and asked the respondent for its reconsideration. He
referred to a similar case, obviously the case of the ex Town
Clerk Mr. Koutas, whose sixteen years previous service with a
bank had been recognised for pension purposes.

The respondent at its meeting of 17.5.1978 considered the case 30
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 Municipality to reconsider his case once again. In 35
this letter the applicant referred to the case of the ex Town
Clerk Mr. Koutas by name and alleged that the previous sixteen
years of service of Mr. Koutas with the Bank of Cyprus were
recognised by the Municipality for pension purposes.

In reply the respondent wrote letter dated 30.11.1978 which reads as follows:

5 "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 10 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 1st July, 1978."

15 As a result, the applicant filed recourse No. 63/79 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 20 void and of no legal effect whatsoever and that whatever has been omitted should have been performed.

This recourse was fixed for hearing on 25th October, 1979.

25 As both counsel were engaged before the Court of Appeal on that day the hearing was shifted 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, it was further adjourned to 12th April, 1980.

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

35 "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. 5

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". 10

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: 15

"Dear Colleague,

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

I wish to refer to the letter dated 3.1.80 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." 20 25

On the 11th February, 1980, the applicant filed the present recourse.

As it appears from the file this recourse 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.63/1979 an 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 12th April, 1980. On the 12th April, 1980, the opposition in the present recourse was filed where the respondent Municipality, besides opposing the claim of the 30 35

applicant on its merits, raised the following two preliminary legal issues:

- 5 “(a) Respondent’s counsel’s letter dated 11.1.80 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
- 10 (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
- 15 subject-matter of recourse 63/79.”

The application for consolidation, as stated therein, was 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

20 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 the consolidation of recourses, the relevant provision of our Civil Procedure Rules, Order 14, rule 2,

25 applies.

On the 14th November, 1981, judgment was issued by this Court as regards the application for consolidation, where the application was dismissed for the following reasons:

- 30 “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.
- 35 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." 5

The judgment of the Court is reported in (1981) 3 C.L.R. at page 530.

On the 13th April, 1983, judgment was also issued by this Court in Recourse No.63/79 by which the recourse was dismissed on the ground that the decision of the respondent Municipality contained in its letter to the applicant dated 30th November, 1978, the subject-matter of the said recourse, was a confirmatory one of its previous decision dated 21st July, 1978, and, therefore, was not of an executory nature and as such, it could not be attacked by a recourse under Article 146 of the Constitution as the recourse was out of time. This judgment is reported in (1983) 3 C.L.R. 243. 10 15

On the same day, i.e. 13th April, 1983, counsel for applicant in this case applied for an adjournment in order to consider his position in view of the result of Recourse No.63/79 and the case was adjourned for mention to the 27th May, 1983, when by consent, the case was adjourned for hearing for the 19th September, 1983, as regards only the preliminary legal issues raised in the opposition. 20 25

On the 19th September, 1983, on the application of both counsel, it was ordered the filing of written addresses, on the question of the preliminary legal issues.

Having considered the arguments of counsel on the preliminary legal issues, I must say straight away that I fully agree with the submission of counsel for the respondent that his letter dated 11th January, 1980, to counsel for applicant, does not constitute an administrative executory act or decision which can be the subject of a recourse under Article 146 of the Constitution, but it is merely of an informative nature that the respondent Municipality was not prepared to accept the proposal made by the applicant in his letter dated 3rd January, 1980, for settlement of Recourse No.63/79. 30 35

Furthermore, even if we accept that the letter of counsel for the respondent dated 11th January, 1980, contained any decision, such decision was a confirmatory one, confirming the confirmatory decision, the subject matter of Recourse No.63/79.

5 For these reasons, the present recourse is dismissed.

Taking into consideration the facts and circumstances of this case, I am of the view that costs should be awarded in favour of the respondent Municipality and so an order is made accordingly. Such costs to be assessed by the Registrar.

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*Recourse dismissed with costs
in favour of respondent.*