

1984 September 8

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRISTOS PAPADOPOULLOS AND OTHERS,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE DIRECTOR-GENERAL MINISTRY OF HEALTH,

*Respondent.*

(Case No. 293/82).

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*Public Officers—Terms and conditions of service—Public officers in the Public Service at the time of the coming into operation of the Constitution—Their terms and conditions of service safeguarded by Article 192.1 of the Constitution—Supply of a free meal to Assistant Occupational Therapists—A benefit they enjoyed as part of the conditions of their service at the time of the establishment of the Republic—And it could not be taken away in the case of the above officers—But it could be taken away in the case of officers who were employed in the Public Service after the establishment of the Republic.*

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*Public Officers—Conditions of service—No public officer has vested right in the non-alteration of conditions of service—Which are a matter of public law and are regulated from time to time according to the needs and contingencies of the public service.*

The applicants were serving as Assistant Occupational Therapists at the Psychiatric Institutions and by virtue of a circular letter of the Director of Medical Services dated 30th July, 1955 they had the benefit of a free meal when on duty. On the 15th May, 1982 the respondent decided that the above benefit should cease to be provided; and hence this recourse.

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Counsel for the applicant mainly contended that the sub judice decision offends against Article 192 of the Constitution

in that it purports to alter the conditions of service of the applicants to their disadvantage.

5 Counsel for the respondents submitted that the reasons for the granting of the above meal was the fact that the Assistant Occupational Therapists were working more hours weekly than the rest of the public servants; that they were working during the morning hours as well as the afternoon hours; that their wages were lower compared to other occupations; and that such reasons have been eliminated and the Assistant Occupational Therapists are working the same number of hours weekly and the same schedule as the other public servants. Applicants 1 and 2 were in the public service at the time of the establishment of the Republic; and applicants 3-12 were appointed in the Public Service subsequently to the establishment of the Republic.

15 *Held*, that in the case of applicants 1 and 2 the supply of a free meal was a benefit they enjoyed as part of the conditions of their service at the time of the establishment of the Republic and as such it is safeguarded by the provisions of Article 192.1 of the Constitution and it could not be taken away; accordingly their recourse must succeed; that the remaining applicants who were employed in the public service subsequently to the establishment of the Republic do not enjoy the benefit of Article 192 because it is settled that conditions of service are a matter of public law and are regulated from time to time according to the needs and contingencies of the public service (*Economides v. Republic* (1972) 3 C.L.R. 521); that in view of the alterations in the hours of work of the public servants it was reasonable to cease providing them with a free meal because no public servant has a vested right in the non-alteration of conditions of work (see, inter alia, *Menelaou v. Republic* (1982) 3 C.L.R. 419); and that, therefore, no legitimate right of the applicants 3-12 was violated; and that, accordingly, their recourse must fail.

35 *Recourse of applicants 1-2 succeeds.*  
*Recourse of applicants 3-12 dismissed.*

Cases referred to:

- Boydjgis v. Republic*, 1964 C.L.R. 367;
- Suleiman v. Republic*, 2 R.S.C.C. 93;
- Kythreotis v. Republic* (1967) 3 C.L.R. 315;

*Constantinides v. Republic* (1967) 3 C.L.R. 483;

*Economides v. Republic* (1972) 3 C.L.R. 521;

*Menelaou v. Republic* (1982) 3 C.L.R. 419.

**Recourse.**

Recourse against the decision of the respondent whereby the benefit of free meal provided to Asst. Occupational Therapists should cease to be provided to them. 5

*E. Lemonaris*, for the applicants.

*D. Papadopoulou (Mrs.)*, for the respondent.

*Cur. adv. vult.* 10

HADJIANASTASSIOU J. read the following judgment. In the present recourse the applicant seeks a declaration for the following relief:

(a) Declaration that respondent's decision which is contained in the letter ref. M.H. 480/59 dated 15th May, 1982, addressed by the respondent to the Director of the Psychiatric Institutions, and which was communicated to the applicants by a minute of the letter dated 18.5.1982, is null and void and of no effect whatsoever; 15

(b) Costs of the application. 20

The following facts are relied upon in support of the present application:

1. All applicants serve as Asst. Occupational Therapists at the Psychiatric Institutions;
2. Hitherto all applicants enjoyed the benefit of a free meal when on duty; 25
3. The benefit of a free meal was introduced by virtue of a circular letter of the Director of Medical Services No. M.D. 247/48 dated 30.7.1955 and was, at all material times, a part of their conditions of service within the scope of Article 192 of the Constitution; 30
4. The respondent by letter No. M.H. 480/59 dated 15.5.1982 addressed to the Director Psychiatric Institutions decided that henceforth the benefit of a free meal to Asst. Occupational Therapists should cease to be 35

provided. A copy of respondent's said letter is attached to the recourse marked appendix 'B';

- 5 5. The said decision was communicated and came to the knowledge of the applicants by a minute of the Director of the Psychiatric Institutions dated 18.5.1982.

The present application is based on the following grounds of law:-

- 10 1. Respondent's decision offends against Article 192 of the Constitution in that it purports to alter the conditions of service of the applicants to their disadvantage.
- 15 2. Respondents decision is based on a misconception of material facts i.e. the circumstances under which the benefit of a free meal was hitherto allowed to the applicants. Alternatively the respondent reached the afore-said decision without beforehand resorting to an enquiry for the purpose of ascertaining material facts.
3. Respondents decision is not duly reasoned and/or the reasoning behind same is wrong in law and/or defective.

20 Counsel in support of his opposition, relied on the following legal points:

25 "The said decision attacked is lawful, correct and duly reasoned, and was taken in accordance with the provisions of the relevant legislation and after all the relevant facts were taken into consideration and is not contrary to any provision of the Constitution".

The opposition is based on the following facts:

- 30 (1) The then Director of the Department of Medical Services by a circular under No. I.T. 247/48 dated 30.7.1955 granted to the Asst. Occupational Therapists, as well as to others, one free meal when on duty.
- 35 (2) The reasons for the granting of the above meal was the fact that the Assistant Occupational Therapists were working more hours weekly than the rest of the public servants; they were working during the morning hours as well as the afternoon hours; and furthermore, their wages were lower compared to other occupations.

- (3) The above two reasons have been eliminated and the Assistant Occupational Therapists are working the same number of hours weekly and the same schedule as the other public servants. The said factor has been arranged with the recent reorganization and re-structure of the post in the public service. 5
- (4) For the said reasons as well as for reasons which will be presented during the hearing of the case, it was decided to terminate the granting of a free meal to the Assistant Occupational Therapists. 10

Indeed, counsel for the applicants produced in Court a circular letter dated 30th July, 1955, from the Director of Medical Services appending a list of medical department employees eligible for free board and lodgings and/or free meals. (See exhibit 1). 15

On the 5th September, 1966, the Director of the Department of Medical Services, Z. Panos, addressed the following letter to the psychiatric personnel:-

“With regard to your application of the 11th July, 1966, you are informed that after a re-examination of the case it has been decided to grant you one free meal as has been done in the past”. (See exhibit 2). 20

On the 15th May, 1982, the Director-General of the Ministry of Health addressed a letter to the Director of Psychiatric Institutions and had this to say in Greek:- 25

“ Έχω οδηγίες ν’ αναφερθώ στην επιστολή σας με αρ. Φακ. Ψ.Ι.Α/54 και ημερ. 29.4.1982 σχετικά με την παροχή ενός δωρεάν γεύματος ημερησίως στους Βοηθούς Εργασιοθεραπευτές και να παρατηρήσω πως η παραχώρηση αυτή έγινε πριν 25 και πλέον χρόνια με το σαφή όρο ότι η διευθέτηση θα εφαρμόζετο μόνο όταν οι Βοηθοί Εργασιοθεραπευτές ήταν καθήκο την κανονική ώρα του γεύματος. Επειδή το ωράριο τους έχει αλλάξει από πολλά χρόνια και οι Βοηθοί Εργασιοθεραπευτές βρίσκονται στην ίδια ακριβώς θέση όπως όλοι οι Δημόσιοι Υπάλληλοι, η παροχή του δωρεάν γεύματος έπρεπε να είχε τερματισθεί προ πολλού δηλ. από τότε που ο προαναφερόμενος όρος έπαυσε να ικανοποιείται. 30 35

2. Παρακαλούμε όπως προβείτε στη λήψη των απαι-

τούμενων διορθωτικών μέτρων εξηγώντας την κατάσταση στους επηρεαζόμενους”.

And in English it reads:-

5 “I have instructions to refer to your letter under No. I.A./54 dated 29.4.1982 regarding the provision of one free meal daily to the Assistant Occupational Therapists and to observe that such grant was made 25 years ago with the clear term that such arrangement would be made only when the Occupational Therapists were on duty at the regular time of the meal. Because the hours of work have changed a long time ago and the Assistant Occupational Therapists are in exactly the same position as all public servants, the free meal ought to have been terminated long ago, since the said terms were terminated.

15 2. Please proceed to take all corrective steps, explaining the position to the employees who are now influenced”.

The important question that we have to decide is whether the decision of the Director of the Psychiatric Institutions to stop the supply of free meals to applicants infringe any right 20 vested in them by the Constitution or the law.

It is an admitted fact that applicants were given one free meal when on duty as Asst. Occupational Therapists at the Psychiatric Institutions, a benefit that was suspended by the sub judice decision. It is their case that the benefit in question 25 had been vested in them and could not be taken away.

In the case of the two of them evidently it was a benefit they enjoyed as part of the conditions of their services at the time of the establishment of the Republic and as such is safeguarded by the provisions of Article 192.1

30 The benefits covered by paragraph 1 of Article 192 were discussed by Josephides J. in *Boyiadjis v. Republic*, 1964 C.L.R. 367.

We can readily infer that the supply of a free meal was part of the conditions of services of these two applicants and as such, 35 could not be taken away. (See decisions, *Ali Suleiman v. Republic*, 2 R.S.C.C. p. 93, *Christos Kythreotis v. Republic*

(1967) 3 C.L.R. p. 315, *George Constantinides v. Republic*,  
 (1967) 3 C.L.R. p. 483).

The remaining applicants were employed in the public service  
 subsequently to the establishment of the Republic and do not  
 enjoy the benefit of Article 192. It is settled that conditions  
 of service are a matter of public law and are regulated from  
 time to time according to the needs and contingencies of the  
 public service (*Economides v. Republic* (1972) 3 C.L.R. p. 521). 5

In view of the alterations in the hours of work of the public  
 servants it was reasonable to cease providing them with a free  
 meal. No public servant has a vested right in the non-alteration  
 of conditions of work, a subject covered by a series of authorities  
 (see, inter alia, *Menelaou v. Republic*, (1982) 3 C.L.R. 419). 10

With that in mind I have reached the conclusion that no  
 legitimate right of the applicants 3-12 was violated. Their  
 recourse must, therefore, be dismissed. There shall be no order  
 as to costs. 15

*Recourse of applicants 1-2 succeeds.*  
*Recourse of applicants 3-12 dismissed.*  
*No order as to costs.* 20