

1984 February 9

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KYPRIANOS SAVVA,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF FINANCE,

*Respondent.*

(Case No. 266/81).

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*Administrative Law—Administrative acts or decisions—Executory act—Confirmatory act—Rejection of applicant’s claim concerning his pensionable service—No recourse against rejection—Applicant applying for reconsideration but placing no new facts before the administration justifying holding of a new inquiry—Decision rejecting his claim a confirmatory one of the previous executory decision and cannot be made the subject of a recourse under Article 146.1 of the Constitution—Recourse against this latter decision out of time.* 5

In June, 1962 the applicant, an educationalist, applied to the Greek Communal Chamber and requested that the period between 26.11.1956 to the 31.8.1959, during which he had been out of the service on account of his own resignation, be recognized as pensionable service and his request was turned down. In January, 1968 he applied to the Minister of Education asking for re-examination of his case and again his request was rejected but he filed no recourse against the rejection. In February, 1970 he applied to the Minister of Finance for recognition of the above period as pensionable invoking the same grounds as before and once again his request was turned down in April, 1970 and no recourse was filed by him. In January, 1981 he applied to the Minister of Finance asking for re-examination of his case and when his application was refused in June, 1981, he filed the present recourse. In support of his 10 15 20

last application applicant relied on the material he had already placed before the respondent and not on any new facts.

*On the preliminary objection that the sub judice decision was a confirmatory one and cannot be made the subject of a recourse:*

5        *Held*, that there has been no new executory act as no new facts were placed before the respondent to justify the holding of a new inquiry; that, therefore, the sub judice act is a confirmatory one of the previous decision and as such it cannot be made the subject of a recourse, accordingly the present recourse has  
10        to be dismissed as being out of time.

*Application dismissed.*

Cases referred to:

*Marangos Ltd. v. Municipality of Famagusta* (1979) 3 C.L.R. 73.

*Economides v. Republic* (1980) 3 C.L.R. 219.

#### 15    **Recourse.**

Recourse against the refusal of the respondent to recognize as pensionable service the period between 26.11.1956 to 31.8. 1959 during which the applicant had been out of the service on account of his resignation.

20        *P. Petrides*, for the applicant.

*M. Photiou*, for the respondent.

*Cur. adv. vult.*

25        A. LOIZOU J. read the following judgment. By the present recourse the applicant challenges the validity of the decision of the respondents dated 3.6.1981 which was communicated to him by letter of even date (enclosure 1 attached to the application) by which the respondents refused to recognize as pensionable service the period between the 26.11.1956 to the 31.8. 1959, during which the applicant had been out of the service  
30        on account of his own resignation.

The applicant was a School Teacher in the Government Service when on the 20th September, 1954, he was granted one year study leave starting in October 1954 in order to proceed to Sir John Cass College in London to read for a B.Sc. Degree

and the conditions set out in the letter of the Director of Education dated 20th September, 1954 (enclosure 2).

On the 21st September, 1955, the Director of Education informed the applicant (enclosure 3) that he had recommended the Government that he be granted three years study leave with pay, as requested, and that the decision would be communicated to him as soon as possible, expressing therein also his easure at seeing that the applicant had been accepted at the aforesaid College. On the 24th November, 1955, the Colonial Office informed him (enclosure No. 4), on directions from the then Colonial Secretary Mr. Lennox-Boyd that the Governor of Cyprus advised that he was granted an extension of study leave for one year without pay and on condition that he made the usual deposit. Such deposit would probably be a sum sufficient to cover the estimated cost of his course, but the matter was left to the Director of Education to advise him on this point. It was added that in the event he would not be accepting such condition, he would be required to return to Cyprus forthwith.

On the 6th November, 1956, the following letter (enclosure 5) was addressed to the applicant:-

"In my letter 66/52/47 dated 19th October, 1956, I drew your attention to para. 5 of my letter 66/52/47 dated 4th September 1956

This reads: "You must, therefore, report for duty in Cyprus at once. I may remind you that you can then apply at the next award of Scholarships, provided you are eligible".

Unless I hear from you by 30th November, 1956, that you intend to comply with this order, your employment as an Elementary School Master will be terminated.

I attach a copy of my letter dated 19th October, 1956.

(Sgd) C. B. Gordon,  
Director of Education".

There followed a letter to the applicant dated 10th November, 1956 (enclosure No. 6) which stated clearly to him that he had to return or resign and by a letter dated the 26th

November, 1956 (enclosure No. 7), the applicant was informed that the Director of Education accepted his resignation contained in his letter dated 15th November, 1956 (exhibit 1, red 1), from his employment as an Elementary School Master with effect  
5 from the 26th November, 1956.

The applicant claims that he was compelled to this situation as he was at the time in the third year of his studies and he wanted to complete same, but I shall be dealing with this allegation when I deal with the legal aspect of the case.

10 The applicant returned to Cyprus and applied on the 23rd November, 1959 for registration and/or licence as a Secondary School Teacher under the Secondary Education Regulations 1948, regulation 8. and his qualifications, apart from his Teacher's Training College Certificate, included his B.Sc. Special  
15 Chemistry Part I of London University. A professional Licence to teach in a Secondary School was granted on the 28th November, 1959 (see blues 4 and 5 respectively in exhibit 2). He was re-engaged as a School Master at the Technical School Nicosia as from the 1.9.59 and after serving in various posts in  
20 the Government Service, he retired as an Analyst, Class I, Department of Medical Services, on the 1st June, 1981.

As it has been raised by way of preliminary objection that the sub judice decision is a confirmatory one and therefore could not be the subject of a recourse under Article 146 of the Constitution reference has to be made to the necessary factual  
25 background upon which this objection is based. The applicant on the 30th June, 1962 (exhibit 1 - red 9, 8, 7) applied to the President of the Greek Communal Chamber revoking his resignation which he had submitted to the Education Office on  
30 the 15th November, 1956, in circumstances which he was describing therein and requested that his services to the said Office be considered as continuous as from the year 1947 until that date. He gives therein the sequence of events, the circumstances  
35 of his resignation, his allegations that the contents of the letter of the Director of the Department of Education on the 6th November, 1956 (enclosure 5) were of a threatening nature and that he was compelled to resign and that he did so believing absolutely that by the struggle of E.O.K.A. the British sovereignty in Cyprus would come to an end and at the conclusion of  
40 the struggle he would again serve the Education of the Island

with a certainty that his negative answer would help the passive resistance of the Cyprus people and so he followed the example of the numerous Greek Policemen of Cyprus and submitted his resignation. He attached thereto several documents, to which already reference has been made in this judgment, and also copies of two documents regarding students' activities in London in his students' days and his letter of resignation of the 15th November, 1956 (exhibit 1 - red 6 - 1). 5

In a reply dated the 8th September, 1962, the applicant was informed that the question of the recognition of his previous service for the purposes of pension could only be done under the relevant Pensions Law which regarding Secondary School Teachers had not, until then, been enacted. It was thought, however, pertinent to stress to him that the revocation of the act of acceptance of his resignation so that his service could be considered continuous as from 1947, was improbable as it created a bad precedent with serious consequences. It was however pointed out that for the reasons he was invoking in his said letter, he could maintain a case on the basis of the Dismissed Public Officers Reinstatement Law, 1961 (Law No. 48 of 1961) and that he could act towards that direction. 10 15 20

It seems, however, that the applicant took no steps in that direction but on the 9th January, 1968, he applied to the Minister of Education (exhibit 1 - red 13) for re-examination of his case. He did so in view of the enactment of the Pensions (Secondary School Teachers) Law, 1967 (Law No. 56 of 1967), which made provision for the pension of secondary school-teachers and that the problem of his compulsion to resignation be re-examined on the basis of section 6(d) of the said Law in conjunction with section 50 of the Elementary Education Law, Cap. 166 which was in force at the time of his resignation from the Elementary Education. He was claiming that on the basis of the aforesaid provisions his service should be considered as a continuous one because (a) in accordance with section 6(b) of Law 56 of 1967 his pensionable "service which could be considered as pensionable by virtue of any other law, regulating the granting of pension from the Consolidate Fund of the Republic, if such service precedes immediately pensionable service by virtue of this Law or interrupts same" and (b) in accordance with section 50 of Cap. 166 "service in respect of which pension or gratuity may be 25 30 35 40

granted must be unbroken except in cases where the service has been interrupted by any temporary suspension of employment as teacher not arising from misconduct, voluntary resignation or refusal to accept a post to which a teacher has been duly appointed under this Law.”

He further raised therein the circumstances of his resignation and that they amounted to compulsion, both because he was in the third year and he could have been left to complete his University education and also that there were political reasons on account of his stand against the then British policy in Cyprus. The said application is a thickly typed document of two and a half pages and attached thereto were a copy of his petition to the President of the Greek Communal Chamber of the 30th June, 1962, to which already reference has been made, the answer thereto by the Administrative Officer of the Chamber, a minute regarding the applicant, the letters of the 6th and 10th November, 1956, two documents regarding the activities of a preparatory Committee for Association of Cypriot Students and another letter dated the 15th November, 1956, i.e. his own resignation.

The Director-General of the Ministry of Education summed up the position in a lengthy document addressed to the Director of the Department of Personnel dated the 14th February, 1968 (exhibit 1 - red 15 - 14) which was received by the said Department on the 16th February. On the 25th April, 1968, a reminder was addressed to the said Director requesting information (exhibit 1 - red 16) as to the stage at which the matter was at the time and finally on the 15th June, 1968, (exhibit 1 - red 18) a decision was reached by the Minister of Finance that by virtue of the second proviso to section 7(1) of the Pensions Law 1967, the interruption of the service of the applicant from the 26th November to the 1st September, 1959, cannot be considered as interrupting the continuity of his service but that the said period of non-employment on account of resignation would not count for pension purposes. The applicant was informed about it by letter dated the 2nd July, 1968 (exhibit 1 - red 21, exhibit 2 - blue 136. No recourse was filed against the said decision.

On the 19th February, 1970, the applicant applied once more to the Minister of Finance (exhibit 1 - red 23) for recognition of the period 26.11.56 to 31.8.59 as pensionable for the same grounds as before, the gist of which was compulsion for political

reasons. He referred in the said letter to his letters of the 8th September, 1962 and 9th January, 1968, and reply thereto was given to him on the 6th April, 1970 (exhibit 1 - red 24) that his request could not be approved and that the said period of interruption did not fall within any of the provisions of section 2(1) of the Pensions (Secondary School Teachers) Law, as amended by the Pensions (Secondary School Teachers) (Amendment) Law 1970, (Law No. 1 of 1970). Apparently the said petition had been submitted soon after the enactment of the said amending law. Again no recourse was filed by him against this decision. The matter was left at that until the 25th January, 1981, when the applicant applied again (exhibit 1 - reds 29, 28, 27) and asked for re-examination of their decision of the 6th April, 1970 (red 24) claiming that he was supplying the respondents with new information. For that purpose the applicant attached to his said application the following documents:

- (a) A certificate from Georghios Christodoulides, The Director of the Higher Technological Institute, dated the 21st January, 1981 (red 26).
- (b) A certificate from Mr. Elias Ipsarides dated 20.1.81 regarding the activities of the applicant as a student (red 25).
- (c) Photocopy of the letter of the Administrative Officer of the Greek Communal Chamber of the 8.9.62.
- (d) Copy of his letter to the President of the Communal Chamber dated 30.6.62.
- (e) A copy of acceptance by the Sir John Cass College.

It is obvious from the contents of his lengthy petition and the documents attached thereto that nothing new had been placed before the Minister of Finance so that the examination of the new petition would amount to a new inquiry. Except that there was a certification of his activities as a student, to which he already referred in his previous petition, nothing new was said. The reply to the aforesaid petition of the applicant is contained in the letter of the 3.6.81 upon the receipt of which the applicant filed the present recourse.

To my mind there has been no new executory act as no new facts were placed before the respondents to justify the holding

of a new inquiry. There was nothing but a repetition of the allegations, legal arguments and circumstances relied upon that had been placed repeatedly before the respondents and in respect of which a decision was taken. In the light of well established  
5 authorities (see, inter alia, *Marangos Ltd. v. The Municipality of Famagusta* (1979) 3 C.L.R. 73, and *Economides v. The Republic* (1980) 3 C.L.R. 219) the present recourse has to be dismissed as being out of time.

I intend, however, to examine the recourse on its merits in  
10 case I am found to be wrong on my approach regarding the nature of the sub judice act.

It is clear from the facts and circumstances of this case that the applicant was placed in a dilemma as to whether he would return to Cyprus and resume his duties as an Elementary School  
15 Teacher or resign and complete his studies in England. No doubt it was a hard decision for the applicant to reach, but there was no element in law of compulsion which in any event could affect the question in issue now in this case, namely, whether the said years could be counted for the purpose of pension.  
20 More so as the decision of resignation and its acceptance referred to a period prior to the coming into operation of the Constitution and could not at the time be challenged by judicial process. To what extent the applicant could take advantage of the Dis-  
25 missed Public Officers Re-instatement Law, 1961 (Law No. 48 of 1961) I need not pronounce as the applicant himself had taken no steps under that law.

The applicant invoked the provisions of sections 49 and 50 of the Elementary Education Law, Cap. 166, which have been  
30 repealed the first by section 6 of Law No. 19 of 1967 and the second by section 5 of Law No. 38 of 1981. The first one even before its repeal could not help the applicant as no where it provides that a teacher who has been out of the service as a result of his own resignation was not to be considered as inter-  
35 rupting his service for pension purposes. The second one, which spoke of the necessity of unbroken service, has been affected by the new section 50 to the extent that the period of his service before the 26.11.56 which could not be recognized because of the requirement of continuity, was removed and as  
40 already stated, the applicant's previous service has been recognized for purposes of pension (see exhibit 1 - red 18). Final-



ly the Pensions (Amendment) Law 1979 (Law No. 38 of 1979) and regulation 17 made thereunder which is invoked by counsel for the applicant in his written address, does not assist the applicant also as regulation 17 applies only to leave without pay, if such leave is "educational leave" granted in the circumstances specified therein which clearly is not the case for the period between the applicant's resignation and his re-engagement in 1959. 5

This recourse would also have been dismissed on its merits.

For all the above reasons the recourse is dismissed, but in the circumstances I make no order as to costs. 10

*Recourse dismissed with no order as to costs.*