

1984 March 22

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LOIZOS SAVVA,

*Applicant.*

v.

THE COUNCIL OF MINISTERS,

*Respondent.*

(Case No. 394/78).

5 *Pensions and gratuities—Police Force—Requirement to resign of member of, following his disciplinary conviction—No absolute right to receive pension—Council of Ministers has a discretion in the matter—Regulation 45 of the Police (Discipline) Regulations 1958-1977—Sections 6(f) and 7 of the Pensions Law, Cap. 311.*

*Equality—Discriminatory treatment—Must be established by evidence.*

*Administrative Law—Administrative acts or decisions—Reasoning—Supplemented by material in the files of the administration.*

10 *Natural justice—Right to be heard—Dismissal of applicant from the Police Force—Validity of dismissal not challenged by recourse—Applicant never charged for any offence, either criminal or disciplinary and not given the chance to defend himself—Whether fact of dismissal can be taken into consideration by the administration in dealing with an application for pension under regulation 45 of*  
15 *the Police (Discipline) Regulations, 1958-1977.*

20 The applicant, a member of the Police Force, was tried disciplinarily, and the sentence of requirement to resign was imposed on him. He thereafter applied to the Chief of Police for the grant of pension on the basis of regulation 45\* of the Police (Discipline) Regulations, 1958-1977 and section 7\*\* of the

\* Regulation 45 is quoted at p. 291 post.

\*\* Section 7 is quoted at pp. 292-293 post.

Pensions Law, Cap. 311. His application was dealt with and dismissed by the Council of Ministers and hence this recourse.

Counsel for the applicant contended:

- (a) That the Council of Ministers had no discretion under regulation 45 to decide whether to grant or not a pension or any other retirement benefit to the applicant: 5
- (b) That the discretion of the Council of Ministers was exercised wrongly in that the applicant was the only policeman to whom retirement benefits were not granted. 10
- (c) That the Council of Ministers took into consideration the contents of para. 3 of the submission to it, that is that applicant was dismissed, in 1973, for reasons of non-loyalty to the State and was re-employed in 1974 during the government of the coup d'etat; and that no charges were ever brought against him concerning such accusation and that he was never given the chance to answer them and defend himself. 15
- (d) That the sub judice decision was not duly reasoned.

Regarding contention (b) above Counsel mentioned the case of another police officer to whom allegedly retirement benefits were granted under the same circumstances; but he produced no material or evidence to establish this allegation. 20

*Held*, (1) that the right to a pension under regulation 45 is not an absolute and an unqualified one and that the Council of Ministers has a discretion in the matter under s.7 of Cap. 311. 25

(2) That in the absence of any evidence establishing discriminatory treatment the contention regarding discrimination must be rejected.

*Held*, further, that on the material before this Court and the facts taken into consideration by the Council of Ministers, including the criminal and disciplinary record of the applicant and the last sentence of imprisonment imposed upon him after his conviction on serious charges and his whole conduct in the police force it was reasonably open to the Council of Ministers to take the sub judice decision and that it has not been established that the Council of Ministers exercised its discretion wrongly, or 30 35

contrary to Law, or that it has, in any way, acted in abuse or excess of its powers.

5 (3) That the allegation that the applicant was never charged for any offences either criminal or disciplinary and that he was not given the chance to defend himself, cannot stand, since he did not challenge the validity of his dismissal in 1973; that in fact by not challenging such decision, he appears to have accepted it and it is now a fact within his knowledge forming part of his police record; accordingly contention (c) must fail.

10 (4) That the reasoning of an administrative decision may be supplemented by the respective files of the administration and the other material before the Court; that in the present case, there is enough material in the submission to the Council of Ministers and the documents attached to it from which the  
15 reasoning of the decision may be derived; accordingly contention (d) must, also, fail.

*Application dismissed.*

Cases referred to:

- 20 *Savva v. Republic* (1981) 3 C.L.R. 599;  
*Savva v. Republic* (1979) 3 C.L.R. 250 at pp. 254-256;  
*Constantinou v. Republic* (1984) 3 C.L.R. 456.

Recourse.

25 Recourse against the decision of the respondent dismissing applicant's application for retirement benefits on his being required to resign.

*K. Koushios*, for the applicant.

*N. Charalambous*, Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

30 SAVVIDES J. read the following judgment. The applicant by this recourse challenges the decision of the respondent communicated to him by letter dated 12.7.1978 whereby his application for retirement benefits on his being required to resign, was dismissed.

35 The applicant was a member of the Cyprus Police Force. He enlisted in the Force on 4.2.64 and with the exception of a period as from 1.8.73 till 16.7.74 when he was suspended from the Police Force, he was a member of the Force till 4.2.77 when he

was arrested for participation in an unlawful assembly and riot outside the premises of the American Embassy which took place in the summer of 1974 in the course of which the Ambassador of the United States was murdered. Together with a number of other persons he was prosecuted and charged before the Assize Court with a number of offences amongst which murder, carrying firearms and riot. On 20.5.77 he pleaded guilty to the offences of riot and unlawful assembly and was sentenced to eight months' imprisonment. He was detained in prison till 17.8.77 when he was released after a free pardon from the President of the Republic. As a result of his conviction disciplinary proceedings were taken against him and the sentence of dismissal from the Police Force was imposed on him. On appeal, his punishment was substituted on 24.9.77 with that of requirement to resign.

On 16.1.78 the applicant applied through his counsel, by letter addressed to the Chief of Police, for the grant of pension on the basis of regulation 45 of the Police (Discipline) Regulations and section 7 of the Pensions Law, Cap. 311.

The Chief of Police referred his application to the Director-General of the Ministry of Interior, accompanied by a letter of his, dated the 7th February, 1978 in which, besides making reference to the criminal and disciplinary proceedings against the applicant, he proceeded to mention, in paragraph 3, the family status of the applicant, the date of his entry in the Police Force and, also, the fact that his services were terminated on 1.8.73 in the public interest and that he resumed his duties on 16.7.74 during the government of the coup d'etat. Finally, in para. 4 of the same letter the Chief of Police sets out all the previous offences and convictions of the applicant, both criminal and disciplinary with a record of the disciplinary proceedings attached thereto.

The matter was then referred to the Director-General of the Ministry of Finance, who, by letter dated the 27th May, 1978, informed the Director-General of the Ministry of Interior that - "..... the appropriate organ to decide whether any retirement benefits should be granted to him is the Council of Ministers. In order to assist the Council of Ministers in the examination of his application all material relevant to his criminal and disciplinary prosecution as well as his disciplinary record in the

police force should be put before it.” A submission was, as a result, prepared by the Ministry of Interior and put before the Council of Ministers on 23.6.78, in which mention was made about both the criminal and disciplinary convictions of the applicant, his application for the grant of his benefits to him and the steps taken so far for such purpose, the relevant Police Regulations and the amount of the benefits to which the applicant would have been entitled if his application was granted. Copies of the application of the applicant, of the report of the Chief of Police and of the letter of the Ministry of Finance, were attached to this proposal. In paragraph 3 of the proposal it is stated that -

“It is also attached as appendix ‘B’, a police report in which the circumstances under which he was sentenced to ‘requirement for resignation’. In the said report is also set out his burdened disciplinary record as well as the fact of his dismissal on 1.8.73 in the public interest for non-loyalty to the State.”

The Council of Ministers considered the matter on 29.6.78 and decided (decision No. 17.028) to dismiss his application. The decision of the Council of Ministers was communicated to the applicant by letter of the Director-General of the Ministry of Interior dated 13.7.78, who, as a result, filed the present recourse, which is based on the following grounds of law:

- “1. The act and/or decision of the respondents was taken in contravention of the relevant provisions of the Pensions Law, Cap. 311 and Regulation 45 of the Police (Discipline) Regulations 1958 - 1977.
2. The above act and/or decision lacks sufficient and/or due reasoning.
3. The above act and/or decision was taken under circumstances amounting to excess or abuse of powers, taking into consideration the personal circumstances of the applicant and the special circumstances of the case.”

The case was adjourned many times, on the application of counsel, awaiting the result of another recourse on the same point. Judgment in that recourse was delivered on 26.6.79 by which the recourse was dismissed. An appeal was filed against

it which was finally concluded and judgment was given on 3.12.80 (see *Savva v. Republic* (1981) 3 C.L.R. 599) whereby the appeal was allowed on the ground of violation of the rules of natural justice, in the particular circumstances of that case, but the question whether in cases where the punishment of "requirement to resign" is imposed, retirement benefits may be refused, was left open. 5

Counsel for applicant in their written address have argued that the meaning of regulation 45 of the Police (Discipline) Regulations is that the Council of Ministers has no discretion to decide whether to grant or not, retirement benefits to members of the Police force to whom the sentence of "requirement to resign" is imposed as a disciplinary punishment and that the construction of such regulation entitles such officers to obtain their retirement benefits; The words "— and shall not deprive the member of his right to a pension —" are clear and imperative and preclude the application of sections 6(f) and 7 of Cap. 311 and, further, that regulation 45 should prevail over such provisions as being a special law whilst Cap. 311 is a general law. Alternatively, counsel argued, even if the Council of Ministers had a discretionary power, this power was exercised wrongly and the case of the applicant was the only case of a policeman to whom such benefits were not granted upon his requirement to resign. Counsel lastly argued that the Council of Ministers in taking its decision was influenced by extraneous factors, that is the submission of the Ministry of Interior on the matter, dated 23.6.78 and especially the contents of paragraph 3 of such submission and more specifically, the statement that the applicant was dismissed, on 1.8.73, for not being loyal to the State. It is the contention of counsel for applicant that no charges concerning this matter were ever brought against the applicant who, therefore, had no opportunity to answer them and defend himself and for this reason this fact should not appear in the submission to the Council of Ministers and its inclusion in it has influenced the minds of the members of the Council adversely. 10  
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Counsel for the respondent, on the other hand, submitted that the Council of Ministers had a discretion, under regulation 45, to decide whether to grant or not retirement benefits to the applicant, adopting in this respect the judgment of Malachos J. 40

in the case of *Savva v. Republic* (1979) 3 C.L.R. 250, at pp. 254 - 256. He further contended that the applicant did not discharge the burden of proof cast upon him to show that the Council of Ministers exercised its discretionary power wrongly. With  
 5 regard to the allegation that the Council of Ministers was influenced by extraneous factors, counsel argued that the fact that the applicant was dismissed, in 1973, for reasons of public interest appeared in the file of the applicant and formed part of his personal record in the Police Force and, as such, the Ministry  
 10 of Interior was justified to include it in its submission together with the report of the Chief of Police. Counsel further maintained that the decision of the respondent is a duly reasoned one, such reasoning being supplemented by the material in the file which was before the Council of Ministers.

15 The first point that falls for consideration in this case, is the construction of regulation 45, and, more specifically, whether the Council of Ministers has a discretion, under this regulation, to decide whether to grant or not a pension or any other retirement benefits to policemen who have been required to resign as  
 20 a result of disciplinary proceedings against them.

Regulation 45 of the Police (Discipline) Regulations (1958 - 1977) reads as follows:

25 "45. Εἰς περίπτωσιν καθ' ἣν ἡ δυνάμει τῶν παρόντων Κανονισμῶν ἐπιβληθεῖσα εἰς μέλος τῆς Δυνάμεως ποινή διὰ πειθαρχικὸν ἀδίκημα εἶναι ἢ τῆς ὑπὸ τοῦ ἐκδικάσαντος τὸ ἀδίκημα ἀπαιτήσεως πρὸς τὸ μέλος διὰ παραίτησιν, ἢ συνεπιείξ τῆς τοιαύτης ποινῆς παραίτησις τοῦ μέλους θὰ θεωρῆται, διὰ σκοποὺς συντάξεως, ὡς τερματισμὸς ὑπηρεσίας πρὸς τὸ  
 30 δημόσιον συμφέρον καὶ δὲν θὰ ἀποστερῆ τὸ μέλος τοῦ δικαιώματός του διὰ σύνταξιν χορηγουμένην ἐπὶ τῆς ρηθείσης βάσεως τοῦ τερματισμοῦ ὑπηρεσίας πρὸς τὸ δημόσιον συμφέρον".

The English translation is as follows:

35 ("In case the punishment imposed by virtue of these Regulations on a member of the Force for a disciplinary offence is the one of requirement to resign, the resignation of the member following such punishment will, for pension purposes, be considered as termination of services in the public interest and will not deprive the member of his right to a

pension granted on the said basis of termination of services in the public interest.”)

The same point has arisen before, in the case of *Savva v. Republic* (supra), where Mr. Justice Malachtos, found that regulation 45 should be construed in such a manner as to give a discretion to the Council of Ministers to decide, under sections 6(f) and 7 of the Pensions Law, Cap. 311, whether to grant or not retirement benefits in cases as the one in hand. The judgment of Malachtos, J. reads in this respect, at pp. 255, 256, as follows:

“Counsel for applicant also submitted that since the applicant’s disciplinary punishment was that of ‘requirement to resign’, under regulation 45 such punishment is considered for pension purposes as termination of employment in the public interest and, consequently, the applicant is entitled as of right to pension under the provisions of section 6(f) of the Pensions Law. This section reads as follows:

‘6. No pension, gratuity or other allowance shall be granted under this Law to any officer except on his retirement from the Public Service in one of the following cases:

(f) In the case of termination of employment in the public interest as provided in this Law.’

Counsel for applicant further submitted that the words ‘as provided in this Law’ appearing in section 6(f) of the Law, refer to the computation of the pension and not to any other provision of the Law.

On the other hand, counsel for the respondents submitted that the second part of regulation 45 must be read in conjunction with the last part of section 7 of the Law, which gives absolute discretion to the Council of Ministers to grant pension, gratuity or other allowance as it thinks just and proper.

Section 7 reads as follows:

‘7. Where an officer’s service is terminated on the ground that, having regard to the conditions of the public service, the usefulness of the officer thereto and



5 all the other circumstances of the case, such termination  
is desirable in the public interest, and a pension, gratuity  
or other allowance cannot otherwise be granted to him  
under the provisions of this Law, the Governor in  
Council (now the Council of Ministers) may, if he  
thinks fit, grant such pension, gratuity or other allowan-  
ce as he thinks just and proper, not exceeding in amount  
that for which the officer would be eligible if he retired  
10 from the public service in the circumstances described  
in paragraph (e) of section 6 of this Law.'

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15 I have considered the arguments of counsel on the first  
ground of law and I came to the conclusion that regulation  
45 does not give to a member of the Police Force who was  
required to resign, an absolute right to receive pension,  
gratuity or other allowances. The sentence imposed in the  
case in hand, under regulation 45 is considered for pension  
purposes as termination of employment in the public inter-  
est and so under section 6(f) of the Pensions Law, Cap.  
311, the applicant is entitled to pension as provided in this  
20 Law. The expression 'as provided in this Law' appearing  
in section 6(f) does not mean the calculation and machinery  
under which pension, gratuity and other allowances are  
collected, as counsel for applicant submitted, but the right  
to such benefits and so the provisions of section 7 of the Law  
25 come into play. It is clear that by virtue of section 7 of the  
Law the Council of Ministers is vested with the discretionary  
powers to grant or refuse pension benefits."

The judgment of Malachtos J. was appealed from and the  
relevant part of the judgment of the Full Bench of this Court  
30 (*Savva v. Republic* (1981) 3 C.L.R. 599) delivered by Triantafylli-  
des, P., is to be found at page 601 and reads as follows:

35 "One of the points in issue is whether on a proper con-  
struction of the aforementioned regulation 45 it was rightly  
held by the learned trial Judge that the Council of Ministers  
had a discretionary power to refuse altogether a pension to  
the applicant.

This is an issue which is not free from difficulty and, as in

the present case we think that we do not have to pronounce finally on it, we have decided to leave it open."

Nevertheless, the Full Bench proceeded to resolve the issue before it, on the assumption that the Council of Ministers had a discretionary power to grant or refuse pension benefits and allowed the appeal on an entirely different ground in that there was an infringement of the basic rule of natural justice which required that the appellant should have been given an opportunity to be heard in defence of certain accusations against him. 5

I have considered very carefully both the arguments of counsel as well as the relevant law and the Regulations, and I am inclined to agree with the view of my learned brother Malachtos. In my view, the critical word is the word "right" in the phrase "and will not deprive the member of his right to a pension granted on the said basis of termination of services in the public interest." If such a right was an absolute and an unqualified one, I would have no hesitation in saying that the Council of Ministers had no discretion in the matter. There is, however, nothing either in the Law or the Regulations, to indicate that such a right is absolute. On the contrary, there was till 1967, a provision in section 5(1) of Cap. 311, to the effect that "No officer shall have an absolute right to compensation for past services or to pension, gratuity or other allowance." 10 15 20

This part of section 5, has, however, been repealed by Law 9/67, without being replaced, with the result that section 5 is now left with only one paragraph and reads as follows: 25

"5. Where it is established to the satisfaction of the Council of Ministers that an officer has been guilty of negligence, irregularity or misconduct, the pension, gratuity or other allowance may be reduced or altogether withheld." 30

The meaning of section 5, as it now stands, is that pension etc. is granted, unless the Council of Ministers is satisfied that the officer concerned has been guilty of misconduct etc. as stated above.

The wording of regulation 45 does not preclude the application of the provisions of Cap. 311. 35

The assimilation of "requirement to resign" with "termination of services in the public interest" in the said Regulation, for

pension purposes, simply has the meaning that the applicant's pension will not be withheld, as it would have happened otherwise, but he will be given the chance to receive it, as in the case of termination of services in the public interest, if the Council of Ministers deems fit.

The approach of Malachtos, J., in *Savva v. The Republic* (supra) on the construction of the relevant provisions of the Law and regulation 45 has been adopted by A. Loizou, J., in the recent case of *Andreas Constantinou v. The Republic* (Case No. 316/81 not yet reported)\* in which the issues involved were the same and in which he concluded that any other interpretation would lead to absurdity in the sense that a person submitting his resignation might be deprived of his pension rights, whereas a person required to resign as a result of a disciplinary offence would be entitled as of right to the receipt of a pension.

In my view, all the considerations applicable in the case of termination of services in the public interest, under Cap. 311, are applicable in the present case and I therefore find that, for the reasons I already explained the Council of Ministers had a discretion, under section 7 of Cap. 311, in the present case, to decide or not whether to grant retirement benefits to the applicant.

This ground of counsel for applicant, therefore, fails.

The next point to be considered is the contention of counsel for applicant that the discretion of the Council of Ministers was exercised wrongly in that the applicant was the only policeman to whom retirement benefits were not granted under the same circumstances. He mentioned, in this respect, the case of another police officer to whom, according to his allegation retirement benefits were granted under the same circumstances. Counsel for respondent, however, said in his written address that the case of that police officer was different to that of the applicant. No material was produced by either side regarding the said case, nor did counsel for applicant request counsel for the respondent to produce any material or evidence in connection therewith. In the absence of any evidence establishing such discriminatory treatment I have no other choice but to reject it. Though the

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\* Now reported in (1984) 3 C.L.R. 456.

ground of bad exercise of discretion on the part of the Council of Ministers was based solely on the above allegation which, as already found, has not been substantiated, nevertheless, I shall proceed to examine whether the discretion of the Council of Ministers in refusing applicant's application, was wrongly exercised. On the material before me and the facts taken into consideration by the Council of Ministers, including the criminal and disciplinary record of the applicant and the last sentence of imprisonment imposed upon him after his conviction on serious charges and his whole conduct in the police force, I have come to the conclusion that it was reasonably open to the Council of Ministers to take the sub judice decision and that it has not been established that the Council of Ministers exercised its discretion wrongly, or contrary to Law, or that it has, in any way, acted in abuse or excess of its powers.

Another point raised by counsel for applicant is that the Council of Ministers took into consideration the contents of para. 3 of the submission to it, that is that applicant was dismissed, in 1973, for reasons of non-loyalty to the State and was re-employed in 1974 during the government of the coup d'etat. Counsel said in this respect that no charges were ever brought against the applicant concerning such accusation and that he was never given the chance to answer them and defend himself.

The fact of applicant's dismissal in 1973 and re-employment in 1974, appeared in his personal file and formed part of his service record to the Police Force and as such the Chief of Police and the Ministry of Interior were justified in mentioning it. The allegation that the applicant was never charged for any offences in such respect, either criminal or disciplinary and that he was not given the chance to defend himself, cannot stand, since he did not challenge the validity of his dismissal in 1973. In fact by not challenging such decision, he appears to have accepted it and it is now a fact within his knowledge forming part of his police record. In this respect his case differs from that of *Savva v. Republic* (supra) where it was alleged in the submission to the Council of Ministers that the applicant there was a member of EOKA B whilst he was never informed of such accusations against him and not given the chance of offering an explanation. In the present case, the applicant was actually dismissed in 1973 for similar reasons and although he knew or was deemed to have

known the reasons for his dismissal he did not challenge its validity. This ground also fails and is dismissed.

5 The last ground of law raised by counsel for applicant is that of the reasoning of the sub judice decision. It has been said many times by this Court that the reasoning of an administrative decision may be supplemented by the respective files of the administration and the other material before the Court. In the present case, there is enough material in the submission to the Council of Ministers and the documents attached to it from which the reasoning of the decision may be derived. This ground is, therefore, also dismissed.

10 In the result, this recourse fails and is dismissed, but in the circumstances I make no order for costs.

*Recourse dismissed with no order  
as to costs.*

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