

1985 October 25

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ANDREAS GEORGHIOU,

Applicant,

v.

THE CYPRUS BROADCASTING CORPORATION,

Respondent.

(Case No. 163/84).

5 *The Pensions Law, Cap. 311, s. 17 as amended by Law 2/81, s. 2—Claim by an ex servant of the respondents to have his service with the British Army during the second world war recognised for the purpose of computing his pension*
10 *—Law 2/81 is an amending law and in the absence of a provision to the contrary is not applicable to a wider class of persons than the principal law, i. e. Cap. 311, is intended to apply—In view of the provisions of ss. 2(1) and 3(1) of Cap. 311 (as amended), Cap. 311 does not apply to the employees of C.B.C.*

15 *Constitutional Law—Constitution—Article 122—The definition of “public service” in the said Article is made for the purposes of Articles 122-125 of the Constitution—It would be wrong to generalise and apply such definition in all instances and in particular to questions of pensions.*

20 *Constitutional Law—Constitution—Article 28—No similarity between applicant and another ex servant of the corporation who, unlike the applicant, had served as a government officer until his employment by the C.B.C.—And no similarity between applicant and ex public servants with military service in the British Army during the war.*

The Cyprus Broadcasting Corporation—Pensions Law, Cap. 311 does not apply to the employees of the said corporation.

On the 28.2.1982 the applicant retired from his post of Senior Mechanic/Driver with the respondent Corporation. By letters of his lawyer dated 23.12.1983 and 13.1.1984 to the respondents the applicant claimed that he had served in the British Army from 13.11.1939 to 15.4.1947 and that in accordance with the Pensions Law, Cap. 311 as amended in particular by Law 2/81 the service of an employee in the British Army during any period between 3.9.1939-15.8.1945, and provided that the employee in question was appointed in the public service on or after 3.9.1939, is deemed to be pensionable service. Thus the applicant claimed to be entitled to a proportionate payment in respect of such service.

In reply the respondents wrote, inter alia, that they were not bound by the Pensions Law, Cap. 311 and its amendments by Law 2/81.

Hence the present recourse:

According to the applicant the Pensions Law is applicable to his case as a servant of the respondents by virtue of Article 122 of the Constitution which provides that " 'public service' includes service under the Cyprus Broadcasting Corporation...". Consequently section 2 of Law 2/81, whereby section 17 of Cap. 311 was amended, is mutatis mutandis applicable to him.

Alternatively the applicant claimed that he had been subjected to unequal treatment in that: (a) Another employee of the respondents, namely Socratis Christodoulou had his military service recognised for the purpose of computing his pension and (b) vis-a-vis any other public servant whose military service is recognised by virtue of section 2 of Law 2/81.

Held, dismissing the recourse (1) As it is stated in Article 122 of the Constitution the definitions in that Article are for the purposes of Articles 122 to 125 of the Constitution, that is in relation to the competence of the Public Service Commission. It would be wrong to generalise and apply its definitions to all instances and in particular to questions of pensions and provident fund schemes.

(2) Law 2/81 is an amending law and its scope is not wider than that of the principal law, i.e. Cap. 311, in the sense that, in the absence of a provision to the contrary, it cannot apply to a wider class of persons than the principal law is intended to apply. Section 3(1) as amended of Cap. 311 provides that "Pensions.... are granted.... to officers who have been in the service under the Government of Cyprus" and in the definition section thereof, section 2(1) public service means service in a civil capacity under the Government. It follows that the Pensions Law does not apply to the employees of the respondents who have their own provident fund and retirement scheme.

Held, further as regards the issue of unequal treatment.

(1) Different considerations applied to the case of Socratis Christodoulou who, unlike the applicant, had served as a government officer, until his appointment with the respondents. Furthermore the case of S. Christodoulou is also regulated by a collective agreement between E.A.C., C.Y.T.A., C.B.C. and the Cyprus Refinery and the relative Trade Unions of their staff.

(2) The second ground of discrimination must also fail as there can be no similarity between ex-public servants who have military service and the applicant.

Recourse dismissed.

Cases referred to:

Decision of the Greek Council of State No. 2063/68.

Recourse.

Recourse against the refusal of the respondent to pay to the applicant an amount of money as pension and/or benefit proportionate to his service with the British Army as provided by the Pensions Law, Cap. 311, as amended by Law 2/81.

A. S. Angelides with St. Nathanael, for the applicant.

P. G. Polyviou, for the respondent.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks:

(a) A declaration of the Court that decision of the respondent Corporation of the 26th January 1984, to refuse to pay the applicant an amount of money as pension and/or benefit proportionate to his service with the British Army as provided by the Pensions Law, is null and void and of no legal effect whatsoever. 5

(b) A declaration of the Court that the omission of the respondent to act under the Pensions Law is arbitrary and constitutes abuse and excess of power and is contrary to law. 10

The applicant was employed by the respondent Corporation as a Senior Mechanic/Driver from which post he retired on the 28th February 1982. He was first engaged by the Cyprus Broadcasting Service as Casual Driver. On the 31st December 1958 his services were terminated, as a result of the C.B.S. becoming a Corporation. On the 1st January 1959 he was engaged on a temporary basis by the respondent Corporation and on the 1st September 1970, he was appointed, to the permanent post of Senior Driver/Mechanic, which he held until his retirement. 15 20

The applicant, by letters of his lawyer dated 23rd December 1983 and 13th January 1984, (exhibit 1, reds 131 and 132) wrote to the respondent Corporation claiming that he had served in the British Army from the 13th November 1939 to the 15th April 1947 and that: 25

“In accordance with the Pensions Law Cap. 311 as amended in particular by Law 2 of 1981 of the 13th February 1981 the service of an employee in the British Army during any period between the 3rd September 1939 and the 15th August 1945, and provided that the employee in question was appointed in the public service on or after the 3rd September 1939, is deemed to be pensionable service”. 30 35

Thus he claimed to be entitled to proportionate payment in respect of his said service in the British Army.

In reply the respondent Corporation wrote (exhibit 1, red 133), inter alia as follows:

5 “The Cyprus Broadcasting Corporation has no legal obligation towards your client Mr. Andreas Georghiou, former employee of the Corporation in respect of the matter he raises.

10 The Cyprus Broadcasting Corporation is not bound by the Pensions Law Cap. 311 and its amendments by Law 2 of 1981 of the 13th February 1981. It is considering the amendments and it may adopt or reject the government policy on this matter.”

Hence the present recourse which is based on the following grounds of law:

15 1. The respondent reached its decision in breach of, excess and abuse of power by its refusal to pay the applicant the amount provided by the Pensions Law 1981, Law No. 2 of 1981 upon his retirement from the service of the respondent.

20 2. The respondent Corporation failed to act in accordance with the Pensions (Amendment) Law No. 2 of 1981.

 3. Alternatively and as far as the respondent had a discretion, it was exercised defectively and wrongly.

25 4. The sub judice decision is discriminatory vis-a-vis the applicant, is contrary to the principle of equality in that it paid another employee an amount equivalent to a pension in respect of his service in the British Army.

 5. The respondent failed to conduct any or sufficient enquiry.

30 6. The sub judice decision lacks any or due reasoning.

 7. The refusal of the respondent Corporation was reached by an incompetent organ and/or irregular procedure and/or contrary to law.

35 It is the argument of the applicant that in accordance with section 17 of the Pensions Law, Cap. 311, as amended

by section 2 of Law No. 2 of 1981, service in the Armed Forces of Great Britain between the 3rd September 1939 and the 15th August 1945, is deemed to be pensionable service for the purposes of the Pensions Law. And since the applicant had served in the British Army from the 13th November 1939 to the 15th April 1947, such service of his should be so considered in relation to the benefits he was entitled upon retirement from the respondent Corporation.

According to the applicant the Pensions Law which applies to public servants is also applicable to the case of the applicant as a servant of the Cyprus Broadcasting Corporation, by virtue of Article 122 of the Constitution which inter alia provides that:-

“‘public service’ means any service under the Republic other than service in the Army or the security forces of the Republic and includes service under the Cyprus Broadcasting Corporation....”.

Consequently since, as he claims, the applicant falls within the above definition of a public servant, Law 2 of 1981 is mutatis mutandis applicable to him and the respondent Corporation by failing to consider him as so is guilty of an omission and has acted unconstitutionally and contrary to law.

Article 122 does indeed provide as above but it is of a limited application because as it is also stated the definitions in Article 122 are for the purposes of Articles 122 to 125, that is in relation to the competence of the Public Service Commission. Consequently it would be wrong to generalise and apply the definitions of the above Article to all instances and in particular to questions of pensions and provident fund schemes.

In effect the applicant seeks a declaration that Law 2 of 1981 applies to him being a servant of the Cyprus Broadcasting Corporation.

Law 2 of 1981 is an amending law, a law amending section 17 of Cap. 311 which is considered as the principal law and the scope of such amending law is not wider than that of the principal law, in the sense that, in the absence

of provision to the contrary, it cannot apply to a wider class of persons than the principal law is intended to apply.

5 Cap. 311 is a law which inter alia provides in section 3 (1), as amended, that:

“Pensions, gratuities and other allowances are granted to officers who have been in the service under the Government of Cyprus.”

10 And in the definition section thereof, section 2(1), public service means service in a civil capacity under the Government of Cyprus which does not include service with the C.B.C. or the C.B.S. (as it used to be), and therefore it does not apply to the employees of the C.B.C. and to the applicant, the employees of the respondent Corporation
15 having their own Provident Fund and retirement scheme.

Alternatively the applicant claimed that he has been subjected to unequal treatment and discrimination, in that:

(1) Another employee of the respondent Corporation, a certain Socratis Christodoulou, upon retirement had his
20 military service recognised for the purposes of computing his pension and,

(2) Vis-a-vis any other public servants whose military service is recognized by virtue of section 2 of Law 2 of 1981.

25 As regards Socratis Christodoulou whose military service was recognised for pension purposes, it is evident from his file produced before me exhibit 2, that different considerations applied to him. He was first employed in Government on the 5th July 1936, in the Public Works Department until he joined the Royal Navy on the 27th June,
30 1944. He was demobilised on the 7th July 1946 and on the 8th July 1946 he rejoined the Public Works Department where he remained until the 31st December 1956. Meanwhile on the 1st August 1955 he received a temporary
35 appointment or posting with the Cyprus Broadcasting Service. On the 1st January 1957 he received a permanent and pensionable appointment with the C.B.S. On the 1st January 1959 he was seconded from the Cyprus Government

to the respondent Corporation by virtue of section 13 of the Cyprus Broadcasting Corporation Law, 1958 (Law No. 34 of 1958). On the 22nd April, 1962 he retired by virtue of the C.B.C. (Service of Government Officers) Retirement Regulations, Law No. 6 of 1962. Finally on the 23rd April 1963 he was appointed to the permanent post of Fitter in the respondent Corporation by virtue of section 14(1) of the Cyprus Broadcasting Corporation Law, Cap. 300 A, as amended, where he remained until he retired on the 31st January 1984.

It is therefore clear from the above facts that the said Christodoulou was a Government officer until his appointment with the respondent Corporation. Furthermore his case is also regulated by a collective agreement between the E.A.C., the CYTA, the C.B.C. and the Cyprus Refinery and the relative trade unions of their staff, which set up special arrangements regarding former permanent members of the Government Service. In term 4 of the said agreement it is provided that Government employees who were transferred to the C.B.C. immediately after their retirement from Government service, are entitled to have their government service taken into account as part of the relevant period of entitlement, provided that any amount received by them from the Government was returned to the C.B.C. with interest.

It is clear from the above facts that no discrimination has arisen against the applicant vis-a-vis the said Christodoulou as different considerations apply to each one of them. As is stated in Case No. 2063/68 of the Greek Council of State, the principle of equality is not contravened by regulating differently matters which are different from each other.

The same principles also apply as regards the second ground of discrimination which must also fail for the same reasons, as there can be no similarity between ex-public servants who have military service and the applicant.

It is clear from the above facts that the applicant is not a public servant as defined by the Pensions Law and therefore Law 2 of 1981 does not apply to him. Nor was he a

public officer prior to his employment by the respondent Corporation in order to fall within the provisions of term 4 of the said Collective Agreement.

5 The respondent Corporation by refusing to recognize his military service for pension purposes has acted in accordance with the relevant Laws and Regulations and has exercised its discretion rightly and correctly, after a due inquiry. The sub judice decision was fully within its powers and is clearly duly reasoned.

10 For the above reasons this recourse fails and is hereby dismissed with no order as to costs.

Recourse dismissed.

No order as to costs.