

1985 April 19

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

PIERIS A. PIERIDES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF FINANCE,

Respondent.

(Case No. 285/71).

*Constitutional Law—Equality—Discrimination—Principle of—
Article 28 of the Constitution—It safeguards equality among persons similarly circumstanced.*

5 The applicant, a graduate of the Athens High School
of Economic and Commercial Sciences, was appointed
to the post of Examiner of Accounts, 2nd Grade, on the
1st December, 1970. On the 3rd April, 1971, he applied
to the respondent for the grant to him of additional
placing increments as from the date of his appointment
10 on the ground that he possessed higher academic qualifications.

The respondents turned down his request on the
ground that the policy of granting additional placing
increments to Accounting Officers, 2nd Grade, which was
15 extended to Examiners of Accounts, 2nd Grade, had
been discontinued as a result of the decision of the Council
of Ministers No. 5247 of the 16th December, 1965,
whereby this provision in the scheme of service for Accounting
Officers, 2nd Grade, had been deleted. Hence
20 this recourse.

Counsel for the applicant mainly contended that the
sub judge decision contravened Article 28 of the Constitution
in that it discriminated against him because such in-

crements had been granted to one Mr. Tabakis and to four other officers. From the evidence on record it appeared that the grant of increments to Mr. Tabakis took place before the above decision of the Council of Ministers; and the increments to the four other persons were granted on their appointment to the permanent post of Examiner of Accounts 3rd Grade, so that their salary would not be much lower than the wages they were receiving when they were employed on a casual basis. 5

Held, that what Article 28 of the Constitution safeguards is equality among persons similarly circumstanced; that, in other words, it may be said generally that the equality envisaged by this Article means that the rights of all persons must rest upon the same rule under similar circumstances (see, inter alia, *Mikrommatis and The Republic*, 2 R.S.C.C. 125); that in the present case it cannot be said that the persons who were granted increments were in the same position or under circumstances similar to those of the applicant; and that, therefore, there has been no discrimination against the applicant and there is nothing to show that the respondent acted in any way in abuse of powers; accordingly the recourse must fail. 10 15 20

Application dismissed.

Cases referred to: 25

Mikrommatis v. Republic, 2 R.S.C.C. 125;

Republic v. Arakian (1972) 3 C.L.R. 294;

Kyriakides v. Council for Registration of Architects and Civil Engineers (No. 2) (1965) 3 C.L.R. 617;

Matsis v. Republic (1969) 3 C.L.R. 215. 30

Recourse.

Recourse against the refusal of the respondent to grant applicant additional placing increments on the ground of higher academic qualifications.

E. Lemonaris, for the applicant. 35

S. Georghiades, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

L. LOIZOU J. read the following judgment. By this recourse the applicant challenges the validity of the decision of the respondent Minister of Finance refusing to grant additional placing increments to him on the ground of higher academic qualifications and prays for a declaration that such decision is null and void and of no effect whatsoever.

The facts of the case are briefly as follows:

The applicant was appointed to the post of Examiner of Accounts, 2nd Grade, on the 1st December, 1970. He is a graduate of the Athens High School of Economic and Commercial Sciences. On the 3rd April, 1971, he applied, through the Head of his Department, to the respondent for the grant to him of additional placing increments as from the date of his appointment on the ground that he possessed higher academic qualifications.

By letter dated 3rd May, 1971 (exhibit 1), the Director-General of the Ministry of Finance informed the applicant, through the Head of his Department, that his request could not be acceded to on the ground that the policy of granting additional placing increments to Accounting Officers, 2nd Grade, which was extended to Examiners of Accounts, 2nd Grade, had been discontinued as a result of the decision of the Council of Ministers No. 5247 of the 16th December, 1965, (exhibit 3) whereby this provision in the scheme of service for Accounting Officers, 2nd Grade, had been deleted.

The scheme of service in force, at the relevant time, for the post of Accounting Officer, 2nd Grade, was approved by the Council of Ministers in 1960 and, before its amendment as above mentioned, under the heading "Qualifications Required" it provided as follows:

"A university degree in Commercial subjects or other appropriate post-secondary education. Such candidates may be allowed to enter the post at a higher point in the salary scale."

No similar provision was contained in the scheme of service for the post of Examiner of Accounts, 2nd Grade. But as a result of an application made by a Mr. Tabakis, also a graduate of the Athens High School of Economic

and Commercial Sciences, who had been appointed to the post of Examiner of Accounts, 2nd Grade, on the 1st May, 1963, and following consultations between the then Auditor-General and the Minister of Finance, it was decided to apply this policy also to graduates of the above school appointed to the post of Examiner of Accounts, 2nd Grade (exhibits 6 and 2 dated 23rd October, 1963, and 5th November, 1963, respectively). 5

It was contended by learned counsel for the applicant that the decision challenged by this recourse not to grant additional placing increments to the applicant contravened the provisions of Article 28 of the Constitution in that it discriminated against him. The ground upon which counsel's contention was based was that such increments had been granted to Mr. Tabakis, mentioned above, and to, at least, four other Accounting Officers in the Treasury Department who were among ten persons named at paragraph 8 of the facts in support of his application but counsel could not say exactly who they were. Counsel further contended that the decision complained of was taken in abuse of powers. Learned counsel, however, was not aware if any additional placing increments were ever granted to any person appointed either to the post of Examiner of Accounts, 2nd Grade, or Accounting Officer, 2nd Grade, after the decision of the Council of Ministers No. 5247 and the consequent revision of the scheme of service then in force. But his argument, as I understood it, was that additional placing increments were granted to persons appointed to the post of Examiner of Accounts, 2nd Grade, on the strength of the letter, exhibit 2, addressed by the Director-General of the Ministry of Finance to the Chairman of the Public Service Commission and that, therefore, such concession was not affected either by the decision of the Council of Ministers or by the revision of the scheme of service of the post of Accounting Officer, 2nd Grade, as a result thereof. 10
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It seems to me that counsel's argument is not tenable. It is abundantly clear both from exhibit 2 and exhibit 6 that the granting of additional placing increments to persons appointed to the post of Examiner of Accounts, 2nd Grade, was decided as a concession in view of the provi- 40

sion of the scheme of service of the post of Accounting Officer, 2nd Grade, so as to put the officers appointed to the two posts on the same footing.

5 Coming now to the question of discrimination, it is to be noted from the evidence on record that, in so far as Mr. Tabakis is concerned, both his appointment to the post of Examiner of Accounts, 2nd Grade, and the grant to him of additional placing increments, took place before the decision of the Council of Ministers and the conse-
10 quent revision of the scheme of service for the post of Accounting Officer, 2nd Grade.

With regard to the other officers whom counsel could not name and who, as he alleged, received additional increments after the decision of the Council of Ministers and the revision of the scheme of service, the position is not at all as
15 counsel alleged. These persons, who, incidentally, are not any of the persons mentioned in paragraph 8 of the facts in support of the recourse but three officers whose names appear in exhibit 9, were serving on a daily wage basis as
20 Examiners of Accounts, 2nd Grade. The period of their service ranged from nine months to over three years and the wages received by them were £2.850 mils per diem. They were subsequently appointed to the permanent post of Examiner of Accounts, 3rd Grade, the initial salary of
25 which was much lower than the wages paid to them whilst serving on a daily wage basis. In fact the wages they were receiving before their appointment to the permanent post were equivalent to the salary received by an officer appointed and placed at the initial scale of the same post who
30 had 9½ years service. And this is the only reason why it was decided to grant additional increments to them and not any reason related to the provisions of any scheme of service.

What Article 28 of the Constitution safeguards is equality among persons similarly circumstanced. In other words,
35 it may be said generally that the equality envisaged by this Article means that the rights of all persons must rest upon the same rule under similar circumstances. There is abundant authority with regard to this Article. (See, inter alia, *Mikrommatis and The Republic*, 2 R.S.C.C., 125;
40 *The Republic v. Arakian* (1972) 3 C.L.R. 294; *Kyriakides v. The Council for Registration of Architects and Civil En-*

gineers (No. 2) (1965) 3 C.L.R. 617; and Matsis v. The Republic (1969) 3 C.L.R. 215).

In the present case it cannot be said that the persons who were granted increments were in the same position or under circumstances similar to those the applicant was. In the case of Tabakis he was accorded this treatment when the policy was still in force, before the amendment of the scheme of service for the post of Accounting Officer, 2nd Grade, as a result of the decision of the Council of Ministers. And the other three persons were granted increments for no other reason than that their salary, on their appointment to the permanent post of Examiner of Accounts, 3rd Grade, would not be much lower than the wages they were receiving when they were employed on a casual basis.

In the case of the applicant, on the other hand, the policy of granting additional placing increments had been discontinued and was not in force either at the time of his appointment or at the time of his application for such increments.

In the circumstances I find that there has been no discrimination against the applicant and that there is nothing to show that the respondent acted in any way in abuse of powers.

In the result this recourse fails and it is hereby dismissed. There will be no order as to costs.

*Recourse dismissed.
No order as to costs.*