

1986 September 26

[TRIANTAFYLIDIS, P., MALACHTOS, SAVVIDES.
LORIS, KOURRIS, JJ]

ANTONIS LOUCA,

Appellant-Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF INTERIOR,
2. THE DIRECTOR-GENERAL OF THE MINISTRY
OF INTERIOR,

Respondents

(*Revisional Jurisdiction Appeal No. 520*).

Pensions and Gratuities—Police Force—Disciplinary punishment of “requirement to resign”—Application to Council of Ministers under Reg. 45 of The Police (Discipline) Regulations—The Pensions Law, Cap. 311, as amended, sections 6(f) and 7—In dealing with an application under the said Regulation, the Council of Ministers are vested with discretionary powers to grant or refuse pension benefits. 5

Natural Justice—Right to be heard—It applies to cases where a sanction is to be imposed.

Reasoning of an administrative act—The reasoning can be derived from the administrative file. 10

Words and Phrases “... as provided in this law” in section 6(f) of the Pensions Law, Cap. 311—The expression refers to the whole law and not to any particular provision thereof. 15

The appellant, who, as a member of the Police Force, was sentenced to the disciplinary punishment of “Requirement to resign” applied for pension to the Council of Ministers. As his application was turned down, he filed a recourse challenging the relevant decision of the Council 20

of Ministers. This is an appeal from the judgment, where-
by his said recourse was dismissed.

5 The main point in this appeal is whether the Council of
Ministers in dealing with an application for pension under
Reg. 45* of the Police (Discipline) Regulations 1958 to
1977 had a discretionary power to refuse altogether a
pension to the appellant.

10 *Held, dismissing the appeal:* (1) Regulation 45 of the
said Regulations does not by itself confer a right to pen-
sion, but simply explains the effect of "requirement to
resign" by providing that it "will not deprive a member
of his right to pension" and equates the "requirement to
resign" with "the termination of employment in the public
interest" set out in section 6(f)** of Cap. 311. The
15 expression "as provided in this law" cannot be confined
to a particular provision of the law, but it must be ex-
tended to cover the whole of it (*Constantinou v. The Re-
public* (1984) 3 C.L.R. 456 approved). So according to
the provisions of s. 7 of Cap. 311, as amended, the Council
20 of Ministers is vested with discretionary power to grant
or refuse pension benefits.

(2) The reasoning of an administrative act can be de-
rived from the administrative file as well. In this case the
proposal of the Minister of Interior to the Council of
25 Ministers is so explicit that it can by itself afford due
reasoning of the sub judice act.

(3) As regards the complaint of the appellant that the
Council of Ministers violated the rules of Natural Justice,
it must be observed that generally speaking the right of
30 audience can be invoked only in cases where a sanction
is to be imposed and in any event in this case the ap-
pellant had an opportunity of being heard as he submitted
an application to the Council, wherein he could state
whatever he considered relevant and necessary to state.

35

Appeal dismissed.

No order as to costs.

* Quoted at p 1643 post.

** Quoted at p 1644 post.

Cases referred to:

Constantinou v. The Republic (1984) 3 C.L.R. 456;

HadjiSinnos v. The Republic (1969) 3 C.L.R. 451;

Orphanides v. The Republic (1968) 3 C.L.R. 385.

Appeal.

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Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Demetriades, J.) given on the 8th July, 1985 (Revisonal Jurisdiction Case No. 198/82)* whereby appellant's recourse against the decision of the respondents rejecting his claim for the grant to him of retirement benefits was dismissed. 10

S. & A. Spyridakis, for the appellant.

A. Vadimirov, for the respondent.

Cur. adv. vult.

TRIANTAFYLIDIS P.: The unanimous judgment of the Court will be delivered by Loris J. 15

LORIS J.: The present appeal is directed against the judgment given by a Judge of this Court in the first instance, whereby the recourse of the appellant, under No. 198/82, impugning the decision of the Council of Ministers under No. 21357 (43) which turned down his claim for pension, was dismissed. 20

The appellant, who enlisted in the Police Force on the 7th February 1964, was charged, at some time after May 1981, with five disciplinary offences committed by him between the 29th January 1981 and the 31st May 1981, while serving as a constable at the Police Station of Amiantos—Limassol District; on his own plea of guilty to all five charges he was initially sentenced to pay a fine, but the Divisional Police Commander in the exercise of his powers as a reviewing officer, by virtue of regulation 18(4) of the Police (Discipline) Regulations 1958-1981, altered the sentence to one of "dismissal from the Police Force". 25
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* Reported in (1985) 3 C.L.R. 1531.

On appeal to the Chief of Police the sentence aforesaid was substituted by another, requiring the appellant to resign from the force.

5 On the 26th October 1981, the appellant, after complying with the sentence imposed on him by the Chief of Police, wrote, through his lawyer, a letter to the Secretary of the Council of Ministers asking for the examination by the Council of Ministers of his claim for pension under regulation 45 of the Police (Discipline) Regulations 1958-10 1981.

His request was examined and rejected by the Council of Ministers on 12.2.82 (Decision No. 21357); the appellant filed recourse under No. 198/82 impugning the aforesaid decision which was heard and determined in the 15 first instance by a Judge of this Court; the recourse was dismissed and the present appeal is directed against the dismissal thereof.

20 The main point which falls for consideration in the present appeal is whether on a proper construction 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 appellant.

25 Regulation 45 of the Police (Discipline) Regulations, 1958 to 1977 reads as follows:

30 "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 arising as a result of such punishment will, for purposes of pension, be considered as termination of services in the Public interest and will not deprive the member of his rights to pension granted on the said basis of termination of services in the public interest."

35 Learned counsel for the appellant forcefully submitted that owing to the express provisions of Regulation 45 the appellant could not be deprived of his rights to pension; he maintained that the Council of Ministers had no dis-

cretionary power to refuse a pension altogether to the appellant.

With respect we find ourselves unable to agree with this submission of counsel.

It is abundantly clear to us that Regulation 45 does not by itself confer any right to pension. It simply (A) explains the effect of "the requirement to resign", envisaged by the Police (Discipline) Regulations, on pension, by providing that "the requirement to resign .. will not deprive a member of his right to pension." 5 10

And (B) Brings "the requirement to resign" within the recognised exceptions by virtue of which pension is being granted under the Pensions Law Cap. 311, by equating it ("the requirement to resign") with "the termination of employment in the public interest" set out in section 6(f) of Cap. 311. 15

The wording of regulation 45 is clear and unequivocal:

"The requirement to resign will, for purposes of pension, be considered as termination of services in the public interest...". 20

The right to pension is conferred by virtue of the provisions of the Pensions Law Cap. 311, as amended; the circumstances in which pension may be granted are set out in section 6 of the Law, the relevant part of which reads as follows: 25

"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:- 30

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

”

We are in agreement with our brother Judge A. Loizou (vide *Constantinou v. The Republic* (1984) 3 C.L.R. 456 35

at p. 461) that the expression "as provided in this Law" which occurs in para. (f) of section 6 of Cap. 311, as amended, cannot be confined to a particular provision of the Law but it must be extended to cover the whole of it.

- 5 So according to the provisions of s. 7 of Cap. 311, as amended, the Council of Ministers is vested with discretionary power to grant or refuse pension benefits.

Coming now to the submission that the sub judge decision was not duly reasoned. Due reasoning is an essential requirement for an administrative decision; but due reasoning can be sufficiently derived from the administrative file as well. In this particular case the Council of Ministers had before them the record of the appellant and every other necessary material and in particular the "proposal" of the Minister of Interior dated 18.1.82 to the Council which is so explicit that it may afford by itself the due reasoning required.

All this material was also before the learned Judge who tried the recourse in the first instance: and we had the opportunity of going through it on appeal. We must say that this is not a case where the reasoning of the sub judge decision is such as to leave the Court, or any person interested in the matter, in any doubt as regards its nature: this ground of appeal is therefore doomed to failure as well.

In connection with the submission that the rules of natural justice have been violated by the Council of Ministers as the applicant was not heard: In the first place generally speaking the right of audience can be invoked only in cases where a sanction is to be imposed. Thus no disciplinary sanction should be imposed without the public officer concerned being given the opportunity to be heard before the sanction in question is decided upon. (*Hadjisinnos v. Republic* (1969) 3 C.L.R. 451). Rules of natural justice are also applicable to review procedure under regulation 18(4) of the Police (Discipline) Regulations 1958 (*Orphanides v. Republic* (1968) 3 C.L.R. 385).

Of course in the present case we must not lose sight of the fact that the appellant was not on trial on disci-

plinary charges; the Council of Ministers was simply examining his request for pension; and further that even so he had the opportunity of being heard as he submitted an application to the Council through his advocate wherein he had the opportunity to state whatever he considered relevant and necessary to state. We find no merit on this complaint which is dismissed as well. 5

In the result present appeal fails and is accordingly dismissed; in the circumstances we have decided to make no order as to its costs. 10

*Appeal dismissed with no order
as to costs.*