

1987 January 16
[MALACHTOS J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NEOPHYTOS PAPAMILTADOUS

Applicant

v

THE REPUBLIC OF CYPRUS THROUGH
THE COUNCIL OF MINISTERS

Respondents

Case No 708

Pensions and Gratuities —Police Force—Requirement to resign—Applicant following his disciplinary conviction—The power to grant a gratuity and pension under Reg 45 of the Police (Discipline) Regulations 1958-1976—Discretionary power—Sections 6(f) and 7 of the Pensions Law Cap 311

5 Constitutional Law—Equality—Constitution Art 28 The Police (Discipline) Regulations Reg 45—The discretion given thereunder does not infringe the principle of equality—The principle of equality does not prohibit reasonable differentiations and distinctions

Administrative act—Reasoning of

10 The applicant who as a member of the Police Force had been found guilty of three disciplinary offences and sentenced to the disciplinary punishment of the «requirement to resign» applied to the Council of Ministers for a gratuity and a pension under Reg 45* of the Police (Discipline) Regulations 1958-1976. The Council turned down the said application and as a result the applicant filed the present recourse.

15 Held dismissing the recourse (1) The expression «will not deprive the member of his rights» in the above Regulation does not take away the discretionary powers given to the Council of Minister by sections 6 and 7 of the Pensions Law Cap 311**

20 (2) The discretion given by Reg 45 does not amount to a contravention of the principle of equality

(3) The fact that other police officers upon termination of their service upon being required to resign had received their retirement benefits

*Quoted at pp 107-108 post

**The relevant part of section 6 and the whole section 7 are quoted at pp 107-108

not necessarily mean unequal treatment in view of the reasonable distinctions and differentiations existing between them and the applicant, taking into consideration the circumstances surrounding each particular case

(4) The sub-judice decision is duly reasoned. The reasoning appears both in the decision itself and in the relevant file which was before the respondents, when they took the sub-judice decision 5

*Recourse dismissed.
No Order as to costs*

Cases referred to

- Savva v The Republic* (1979) 3 C L R 250, 10
Constantinou v The Republic (1984) 3 C L R 456,
Savva v The Council of Ministers (1984) 3 C L R 285,
Louca v The Republic (1986) 3 C L R 1640,
Micrommats v The Republic, 2 R S C C 125,
The Republic v Nishan Arakian and Others (1972) 3 C L R 294

Recourse.

Recourse against the refusal of the respondents to grant applicant retirement benefits on his being required to resign as a disciplinary punishment after having been found guilty of offences against the Disciplinary Code. 20

A Markides, for the applicant.

A Vassiliades, for the respondent

Cur. adv. vult.

MALACHTOS J. read the following judgment. By the present recourse the applicant claims the following remedies:- 25

(a) A declaration of the Court that the decision of the respondents contained in their letter of 10.12.1980, not to grant to the applicant retirement benefits is null and void and of no legal effect whatsoever, and 30

(b) A declaration of the Court that the omission of the respondents to approve the granting of retirement benefit to the applicant is null and void and of no legal effect whatsoever, and whatever has been omitted should have been performed retrospectively.

The relevant facts of the case are as follows

The applicant enlisted in the Police Force on 18 9 68 On
20 8 80 he was required to resign as punishment when he was
found guilty of offences against the Disciplinary Code for having
5 acted contrary to paragraphs 1, 6(e) and 6(f) thereof as follows

1 Contrary to para 1 for discreditable conduct for having acted
in a disorderly manner or in a manner prejudicial to discipline or
reasonably likely to bring discredit on the reputation of the Force
that is, for having sent an anonymous letter to the President of the
10 Republic, the President of the House of Representatives, the Mini-
ster of Interior, the Minister of Finance and the Chief of Police, the
contents of which were threatening or extortionary

2 For breach of confidence, contrary to para 6(e) for having
made anonymous communications as aforesaid and

15 3 Contrary to para 6(g) for having circulated a document or sta-
tement with regard to a matter concerning the Force, not through
the proper channel of correspondence to the Government and the
Chief of Police

In accordance with Disciplinary Regulation 18(4), the above de-
20 cision was confirmed upon review by the Divisional Commander

The applicant appealed under Regulation 20 to the Chief of Po-
lice on 20 8 80 but at the hearing on 16 9 80 he withdrew such ap-
peal On the same day he applied by letter to the Council of Minis-
ters for a gratuity and pension under Regulation 45 of the Police
25 (Discipline) Regulations 1959-1976

The Council of Ministers met on 6 10 80, considered such ap-
plication and decided to reject it Their decision was communica-
ted to the applicant by letter of the Chief of Police dated 10 12 80

As against this decision the applicant filed the present recourse

30 It was argued on behalf of the applicant that the said decision is
illegal as being contrary to Regulation 45 of the Police (Discipline)
Regulations This Regulation reads as follows

«In case the punishment imposed by virtue of these Regulations
on a member of the Force for a disciplinary offence is the one of
35 requirement to resign, the resignation of the member arising as a
result of such punishment will, for purposes of pension, be consi-

dered 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»

It was also contended that even if such discretion did exist, the sub judice decision must still be annulled for lack of due reasoning 5

Furthermore, on the principle of equality such discretion cannot exist since it would result in certain persons receiving heavier punishment by the non-payment of gratuity and pension

It was also contended that even if such discretion did exist, the sub judice decision must still be annulled for lack of due reasoning 10

Finally it was contended that the applicant was subjected to unequal treatment vis a vis other officers who where required to resign but were granted their retirement benefits.

I must say straight away that I do not agree with the interpretation given to Regulation 45 by counsel for applicant This regulation has been interpreted by this Court in the case of *Charalambos Savva v The Republic*, (1979) 3 C L R 250, where it was decided that the expression «will not deprive the member of his rights» does not take away the discretionary powers given to the Council of Ministers by sections 6 and 7 of the Pensions Law, Cap 311 15 20

Section 6 of the Pensions Law, Cap 311, in so far as it is relevant reads as follows -

«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 25

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

The words «as provided in this Law» refer, inter alia, to section 7 thereof which reads as follows 30

«7 Where an officer's sevice is terminated by the Council of Ministers on the ground that, having regard to the conditions of the public service, the usefulness of the officer thereto and 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 35

Council of Ministers may, if it thinks fit, grant such pension, gratuity or other allowance as it thinks just and proper, not exceeding in amount that for which the officer would be eligible if he retired from the public service in the circumstances described in paragraph (e) of section 6 this Law».

The case of *Savva*, supra, was followed in *Contantinou v. The Republic*, (1984) 3 C.L.R. 456 where regulation 45 was considered. At p.461 of this report the following is stated:

«I agree fully with the approach of Malachos, J., hereinabove referred to on the construction of the relevant provisions of the Law and of regulation 45. The expression 'as provided in this Law' in para. (f) of section 6 of the Law cannot be confined to a particular provision of the Law but to the whole of it and in this respect section 7 which deals with the question of pension, gratuity or other allowance in cases of termination of services in the public interest is applicable also to cases under regulation 45 when the punishment imposed for a disciplinary offence is the one of requirement to resign. The expression 'will not deprive the member of his rights to pension' appearing in regulation 45 does not take away the discretionary powers of the Council of Ministers that are given to it by section 7 as the said expression in this regulation is followed by the expression 'on the basis of termination of services in the public interest' and the word 'basis' in this expression means the powers - discretionary at that - that the Council of Ministers has under section 7 of the Law.

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.»

Relevant is also the case of *Loizos Savva v. The Council of Ministers*, (1984) 3 C.L.R. 285 and the recent case of *Antonis Louca v. The Republic* decided by the Full Bench of this Court on 26.9.86 in Revisional Jurisdiction Appeal No.520* and not yet reported, where both the above cases were cited with approval as regards the interpretation given to Regulation 45.

I must further say that I also find that there is no contravention

*Reported in (1986) 3 C L R. 1640.

of the principle of equality, neither by the discretion given under regulation 45 nor on the facts of the case. Affidavit evidence was given to the effect that other officers upon termination of their services or upon being required to resign, had received their retirement benefits. This, however, does not necessarily mean unequal treatment in view of the reasonable distinctions and differentiations existing between them and the applicant, taking into consideration the circumstances surrounding each particular case. (See in this respect *Micrommatis v. The Republic*, 2 R.S.C.C.125; and *The Republic v. Nishan Arakian & Others*, (1972) 3 C.L.R. 294. 5 10

Finally, I find that the sub judice decision is duly reasoned, such reasoning appearing both in the decision itself, as well as in the relevant file which was before the respondents at the time the decision complained of was taken.

For the reasons stated above, this recourse fails and is hereby dismissed. 15

There will be no order as to costs.

*Recourse dismissed
No order as to costs.*