

(1987)

1987 June 17

[A LOIZOU J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MAMAS PARPAS,

Applicant,

v

THE REPUBLIC OF CYPRUS, AND/OR
THE MINISTRY OF COMMUNICATIONS AND WORKS,

Respondent

(Case No 369/85).

Time within which to file a recourse — Payment of allowance to a civil servant stopped as from 15 3 83, whereas he protested for the first time on 15 9 83, receiving in the meantime his salary unreservedly — Recourse out of time

Executory decision — Confirmatory decision

Constitutional Law — Equality — Constitution Art 28 1 — Safeguards against arbitrary differentiations, but does not include reasonable distinctions that have to be made in view of the intrinsic nature of things — Civil servants serving at Lamaca International Airport — Credit of two hours travel period to and from their home — Decision to stop such credit in respect of employees residing in Lamaca and suburbs — Distinction between such employees and other employees reasonable 5
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On the 15 5 81 the applicant, who was a resident of Troulli village near Lamaca, was appointed Assistant Airport Officer, Second Grade and started work at Lamaca International Airport. In virtue of an agreement made in 1975 between the Government and the Pancyprian Union of Civil Servants, whereby it was agreed that employees who were posted prior to the Turkish Invasion in Cyprus at the Nicosia International Airport, would continue to have their station in Nicosia and consequently they would be credited with the time of their travel in Lamaca, agreed to be two hours as part of their working hours, the applicant was credited with two hours travel period 15
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The said allowance stopped as far as the applicant was concerned as from 15 3 83. On 22 10 83 the Joint Personnel Committee agreed that the applicant and two other employees residing in the District of Lamaca should stop being credited with travel time as aforesaid

By letter dated 12 2 85 the respondent replied to applicant's letters dated 25 9 83 and 31 10 84, informing the applicant that the termination of the credit was effected in accordance with the relevant decision of the Joint Personnel Committee which the Ministry cannot ignore

5 Hence this recourse

Held *dismissing the recourse* (1) The allowance was stopped as from 15 3 83, whereas the applicant protested for the first time by letter dated 15 9 83, though he was receiving during the intervening time his salary unreservedly. The recourse is out of time. Moreover, the sub judice decision, 10 which was taken without examination of new facts is confirmatory of an earlier one

(2) The applicant was not in the service at the time of the Turkish invasion and therefore did not fall within the class of employees in respect of whom the agreement of 1975 was made

15 Art 28 1 of the Constitution safeguards against arbitrary differentiations, but does not include reasonable distinctions that have to be made in view of the intrinsic nature of things. On the facts of this case a reasonable distinction could be drawn between the class of the applicant and two other employees who resided in Lamaca and suburbs and the other employees of the 20 respondent

(3) The applicant failed to substantiate his complaint of misconception of fact, namely that the respondent did not have in mind that he was living in Troulli village and not in Lamaca town

25 *Recourse dismissed No order as to costs*

Cases referred to

Mavrommatis and Others v The Republic (1984) 3 C L R 1006,

Mynanthis v The Republic (1977) 3 C L R 165,

Zambakides v The Republic (1982) 3 C L R 1017

30 *Demetnades v The Republic* (1986) 3 C L R 290,

Ioannou v The Grain Commission (1986) 3 C L R 612

Recourse.

35 Recourse against the decision of the respondent whereby applicant was deprived of his right to be credited with the period of his travel from his home to his work

A S Angelides for the applicant

M Tsiappa (Mrs), for the respondent

Cur adv vult

A LOIZOU J read the following judgment By the present
recourse the applicant seeks a declaration of the Court that the act
and or decision of the respondent dated the 12th February 1985,
by which he was deprived of his right to be credited with the penod
of his travel from his home to his work, is null and void and with no
legal effect 5

The applicant was on the 15th May, 1981 appointed to the post
of Assistant Airport Officer, Second Grade and started work at
Larnaca International Airport He is a resident of Troulli village
which lies at a distance of eight miles from Larnaca town and he
was credited with two hours travel penod to and from his home
He was so credited as there was an agreement which had been
entered into in 1975, between the Government and the
Pancypnan Union of Civil Servants, under which employees who
were posted prior to the Turkish Invasion in Cyprus at Nicosia
International Airport and were to perform their duties in Larnaca
International Airport they would continue to have as their station
the Nicosia Airport and the time for travel two hours in all offered
by the Government ex gratia, would be considered as part of their
hours of work and be also paid subsistence allowance 10
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On the 24th August 1983, the Sub-committee of the Joint
Personnel Committee submitted a report (Appendix 1), on the
question of the station of employees of the Department of Civil
Aviation who were employed at Larnaca Airport having been
moved to this effect by the Government and the Joint Personnel
Committee As it emanates from the said report three employees
of the Department of Civil Aviation including the applicant who
were working at Larnaca Airport had their place of residence in
Larnaca District and had been so employed after 1975 should no
longer be credited with travel time *on their trip* to Larnaca Airport
At the meeting of the Joint Personnel Committee of the 22nd
October 1983 (Appendix 3) it was agreed that the above
mentioned three employees should stop being credited with such
travel time 25
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In reply to the applicant's letter of the 25th September 1983,
and 31st October 1984 (Appendices 4 and 5) addressed to the

respondent the latter replied ultimately by his letter of the 12th February 1985 (Appendix 7) as follows

«I have instructions to refer to your letter dated 31st October 1984 which was received at the Ministry on the 28th January 5 1985 regarding your claim to continue to be credited with a journey for your travelling to and from work at Lamaca Airport and to inform you that termination of this credit was made in accordance with the relevant decision of the Joint 10 Personnel Committee which the Ministry cannot ignore or differentiate »

As against the decision contained in the aforesaid communication the applicant filed the present recourse

The payment of such allowance to the applicant stopped as from the 15th March 1983, and the applicant complained for the 15 first time to the respondent by his letter dated the 15th September 1983, that is six months after such cessation of payment which is after the lapse of 75 days prescribed in Article 146(3) of the Constitution, though he was receiving during that time his salary unreservedly I may outright say that the present recourse is out of 20 time and that the applicant by his conduct impliedly and unreservedly accepted the decision subject matter of this recourse (See in this respect *Mavrommatis and Others v The Republic* (1984) 3 C L R 1006 *Myrianthis v The Republic* (1977) 3 C L R 165 *Zambakides v The Republic* (1982) 3 C L R 1017 25 and *Demetriadis v The Republic* (1986) 3 C L R 290 Relevant is also the case of *Ioannou v The Grain Commission* (1986) 3 C L R 612)

Moreover the said decision challenged by the applicant is confirmatory of the decision already taken by them without 30 examination of new facts (See *Ioannou* (supra) at p 616 and *Zambakides v The Republic* (supra) at pp 1023-1024) The recourse therefore should be dismissed on this ground

I shall proceed however to examine if there has been any 35 discrimination which appears to be the main ground upon which this recourse is contended

... the year 1983 the number of employees of the Department of Civil Aviation who were working at Lamaca Airport was 76 Out of these employees 56 had been employed for the first time on or

before the year 1974, and had at the time, as their actual station of work, the Nicosia Airport. With the exception of five employees who were residing in Limassol, Frenaros and Theletra, the remaining fifty-one employees out of the fifty-six were residing in the town of Nicosia or in other places within, the Nicosia District. 5

The remaining number of employees of the Department of Civil Aviation, that is twenty-one out of seventy-six, were employed with the Department after the year 1974 and since the date of their employment has as their actual station of work the Lamaca Airport. Out of these fourteen employees were residing in places far away from Lamaca, such as, Nicosia, Emba, Avgorou, Sotera, Paralimni and Limassol. Two of such employees were residing at Lamaca, itself and the applicant was residing at Troulli, very near Lamaca. (Appendix 1 to the Opposition and para iv of Appendix 3 to the Opposition.) 10 15

It is obvious from what has been hereinabove set out briefly that the applicant did not fall within the class of employees in respect of which travelling time had been credited for their journey to and from Lamaca Airport. He was not in the service before 1974 and needless to say he was not and could not be posted at Nicosia Airport. That agreement and its subsequent adoption as a decision of the respondent covered employees of the Department of Civil Aviation, who were prior to 1974 Turkish Invasion stationed for work at the Nicosia Airport and because of the occupation they had to work at the then constructed Lamaca Airport. It seems that it was necessitated by the circumstances affecting them, including, as claimed by the respondents in their address, the difficulty of finding housing accommodation at Lamaca due to the refugee problem, hence these employees were to be deemed to continue to have as their work station the Nicosia Airport and the time for their travelling estimated as two hours, was to be taken as working time so that they were to be paid overtime allowance, and meal allowance. 20 25 30

It is clear that it did not amount to an arbitrary differentiation to stop crediting with travelling time the applicant, who was residing near Lamaca, and the abovementioned two other employees who were residing at Lamaca itself, and all of whom had been employed after 1974 and have been working at Lamaca Airport. 35

Moreover on the basis of the above facts a reasonable distinction could be drawn between the class of the applicant and the other two employees and the rest of the employees employed at the Department of Civil Aviation

- 5 Article 28 1 of the Constitution safeguards only against arbitrary differentiations and does not include reasonable distinctions which have to be made in view of the intrinsic nature of things This ground therefore cannot succeed either

10 The last ground which was introduced by learned counsel for the applicant in the address in reply and in support thereof two affidavits, one by the applicant himself and another by a certain Christodoulos Panteli an Inspector of Airports and a member of the Branch Committee of PASYDY, were filed, is that the respondent acted under a misconception of fact The
15 misconception being that the respondent and the Joint Personnel Committee and the sub-committee it set up to study the matter did not have in mind that the applicant was living in Troulli village and not in Larnaca town

20 A perusal of the relevant documents shows that there has been no misconception of fact as the travelling allowance was stopped from all employees residing in Larnaca District vis-a-vis those residing in other districts In fact in paragraph 4 of the affidavit of Panteli it is stated that they «had in mind three residents of Larnaca and suburbs» and Troulli village must be considered as being a
25 suburb of Larnaca town, being eight miles away from it, next to Livadhia village I do not think that the statement of the affiant in the said affidavit, that they «did not know that the village of the applicant was at such a great distance from the airport» is an accurate one On the contrary it makes it clear that when
30 examining the situations the sub-committee had in mind that the applicant came from Troulli village Moreover in Appendix II the minutes of the sub-committee- paragraph (d) is headed «Application of the agreement for those that reside in Larnaca and near Larnaca » This ground should also fail

A. Loizou J.

Parpas v. Republic

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For all the above reasons this recourse is dismissed with no order as to costs.

*Recourse dismissed.
No order as to costs.*