

1988 December 20

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

STYLIANOS SYMILLOS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE DIRECTOR OF THE DEPARTMENT OF SOCIAL
INSURANCE,
2. THE SOCIAL INSURANCE FUND,

Respondents.

(Case No. 881/87).

Social Insurance—Disability pension—The Social Insurance Law, 1980, Sections 38 and 74(2) (b)—Director has power to discontinue it—Such power may be exercised without prior reference of the matter to the Medical Board.

5 *Revocation of administrative act—Discontinuance of a disability pension upon evidence that the recipient was in fact capable of working, but without purporting to take back benefits already given—It does not constitute a revocation of the decision to grant the pension.*

10 On 14.10.85 the applicant was granted retrospectively a disability pension on the ground that he was "incapable of work".

Following the gathering of evidence that the applicant was in fact working in his wife's supermarket the respondent decided to discontinue the pension as from 1.8.87.

The questions that arose for determination were:

15 (a) Whether the sub judice act was a revocatory act;

(b) Whether power was vested in the Director to discontinue the pension; and

(c) Whether, if such power exists, it could be exercised without first referring the matter to the Medical Board.

Held, dismissing the recourse.

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(1) The sub judice decision does not revoke the decision of 14.10.85 nor does it purport to deprive the applicant of the benefits he received thereunder. It is a new decision grounded on a finding that applicant was capable of work and for that reason disqualified from receiving a pension of total disability.

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(2) The payment of a disability pension is subject to the applicant remaining incapable of work. This is the effect of the unambiguous provisions of subsection 2 of s. 38.

(3) Referral to a medical board is not a prerequisite for a decision under s.38 either to grant, withhold or discontinue a disability pension. It is a matter of discretion for the examiner of claims whether the opinion of a medical board should be sought (see proviso to s. 74(2) (b)).

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*Recourse dismissed.
No order as to costs.*

Cases referred to:

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Terzis v. The Republic (1979) 3 C.L.R. 477;

Hadjjiyorki v. The Republic (1977) 3 C.L.R. 144.

Recourse.

Recourse against the decision of the respondents to discontinue applicant's disability pension.

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T. Papadopoulos, for the applicant.

G. Erotokritou (Mrs.), Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. On 14th October, 1985, the applicant was declared to be incapable of work and was granted on that account a disability pension under the Social Insurance Law 1980 (Law 41/80). The decision had retroactive effect and covered the period following a heart attack that rendered him, according to a finding of the Director, incapable of work. The heart attack was suffered in 1983. Following this affliction and his heart condition, his services with the Municipality of Limassol came to an end. The decision to pension him covered the period following the termination of his employment with the Municipality.

The pension was discontinued from 1.8.87 following an inquiry by the Inspectorate of the Ministry of Labour and Social Insurance into his capacity to work. The decision was duly communicated to the applicant on 18.8.87. On two separate occasions inspectors of the Ministry visited the supermarket or department store of his wife at Limassol with a view to inquiring into the doings of the applicant at the business of his wife that he visited daily and spent long periods during work hours. Their visits gave the inspectors first-hand knowledge of what he was doing: He supervised work on the first floor of the department, directed shop-assistants whenever necessary in the discharge of their duties, and personally served customers whenever occasion arose. In fact, he helped one of the inspectors buy a belt. Also, he was in charge of the cash register.

Statements obtained from shop-assistants confirmed that the applicant visited the business of his wife daily and that he took part in the transaction of business albeit a limited one. Only in the absence of his wife - the manageress of the business - he assumed anything akin to managerial duties. Usually, he confined himself to his task and occasionally occupied himself with the cash register.

Although the statements of the shop-assistants attributed to the applicant a less active rôle at the store than the inspectors had occasion to witness him perform, the inescapable inference from

their statements too, is that the applicant rendered services to the business betraying, no doubt, capacity to perform work of that kind.

In the light of the evidential material before the Director, it was at the least reasonably open to him, if not inevitable, to conclude that applicant was capable of doing the work that he was carrying out at the business of his wife. Given this finding, two questions must be answered - 5

- (a) whether power vested in the Director to discontinue the pension and, if so, 10
- (b) whether this could be done without reference anew to a medical board summoned under the Social Insurance Law (s.74).

Counsel for the applicant submitted that the sub judice decision is of a revocatory nature and as such ought to conform to the principles governing the validity of revocatory decisions. I cannot, with respect, agree that this is the nature of the decision under consideration. The sub judice decision does not revoke the decision of 14.10.85 nor does it purport to deprive the applicant of the benefits he received thereunder. It is a new decision grounded on a finding that applicant was capable of work and for that reason disqualified from receiving a pension of total disability. The term "incapable of work" defined in s.2 of the Social Insurance Law was the subject of extensive discussion in *Terzis v. Republic* (1979) 3 C.L.R. 477. It originates from the *English Insurance Act 1946* and, as the Court observed in the above case, guidance may be derived from the interpretation of the term made by social insurance commissioners in England. Very briefly, "incapable of work" conveys the notion of total incapacity for work by reason of some specific disease or bodily or mental disablement. (See, also, *Savvas C. Hadjiyiorki v. Republic* (1977) 3 C.L.R. 144). Does power vest in the Director of Social Insurance to discontinue a disablement pension? The answer is in the affirmative in view of the plain provisions of the enactment whereby a total disability pension may be granted, notably s. 38 of the law. 15
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In fact, the payment of a disability pension is subject to the applicant remaining incapable of work. This is the effect of the unambiguous provisions of subsection 2 of s. 38 that provides:-

5 "Subject to the provisions of s. 58 disability pension is paid from the relevant date whilst the insured remains permanently incapable of work and has not reached pensionable age."

Consequently, there was power in the Director to discontinue the pension.

10 The last question that requires an answer is whether this could be done without reference to a medical board. Referral to a medical board is not a prerequisite for a decision under s.38 either to grant, withhold or discontinue a disability pension. It is a matter of discretion for the examiner of claims whether the opinion of a medical board should be sought (see proviso to s. 74 (2) (b)).
15 Non reference of the question to a medical board in this case was, in the light of the evidence available, a reasonable course. There was ample evidence from which it could be inferred that applicant attended the business of his wife over a long period of time; that he performed work at the business of a kind indicating capacity to
20 work. Hence, the omission to refer the matter to a medical board was not fraught with any abuse or excess of power.

In the light of the above, the recourse is dismissed, the sub judice decision is confirmed pursuant to the provisions of para. 4 (b) of article 146 of the Constitution.

25 Let there be no order as to costs.

*Recourse dismissed.
No order as to costs.*