

[ZEKIA, P., VASSILIADES, TRIANTAFYLIDIS, JOSEPHIDES, JJ.]

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June 1

MELIS PARASKEVA,

Appellant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE
MINISTRY OF INTERIOR,

Respondent.

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(Revisional Jurisdiction Appeal No. 2).

Public Officers—Re-employment or re-instatement of — Appeal from dismissal of Appellant's recourse against the decision of Respondent not to re-employ or re-instate him in the Fire Service from where he retired on medical grounds—Appeal based more on compassionate than on legal grounds.

Applicant filed a recourse on the 30th May, 1963, under Article 146 of the Constitution and applied for an order of the Court annulling the decision of the Minister of Interior not to re-employ him in the Fire Brigade Service from where he retired on medical grounds under section 6(e) of the Pensions Law, Cap. 311, on the 1st September, 1960.

The Court exercising its original revisional jurisdiction dismissed the recourse in question on 16th December, 1964; hence the present appeal.

Held, 1. Learned counsel for the appellant has certainly taken great pains to make out a good case for her client on compassionate grounds. But as soon as the case came to be tested on legal considerations in the course of the argument, it became apparent that there was no legal ground upon which it could be successfully argued.

2. The question of applicant's present state of health, as well as the other circumstances which would support his request for re-employment now as a fireman, will, we believe, be sympathetically considered by the proper authority on whom the responsibility rests for making the decision for his re-employment or otherwise. This Court is not in a position to express any view on applicant's fitness for re-appointment; and can do no more about it than extend the sympathy already expressed, in the circumstances, for his numerous family.

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3. The appeal cannot succeed and must be dismissed with no order as to costs.

Appeal dismissed.

Appeal.

Appeal against the judgment of a judge of the Supreme Court of Cyprus (Munir J.) given on the 16th December, 1964, (Case No. 95/63) dismissing a recourse against the decision of the Respondent not to re-employ applicant in the Fire Brigade service.

E. Ioannidou-Vrahimi (Mrs.) for the appellant.

K.C. Talarides, Counsel of the Republic, for the respondent.

ZEKIA, P.: The appeal is dismissed and the reasons will be given by my learned brother Mr. Justice Vassiliades.

VASSILIADES, J.: The present appeal* appears to be based more on compassionate than on legal grounds.

The appellant is a middle aged man with heavy family commitments. He is the supporter of a family with many children depending on the earnings from his work. He is now trying to go back to his employment as a fireman, on the contention that, having been retired on medical grounds, he can now show that the certificate containing the opinion of the Medical Board upon which he was retired, was wrong. He contends that, on the strength of a later medical certificate, he can show that he is healthy and fit for his work.

For the reasons already explained in the course of the argument we do not think that his present state of health, several years after his retirement on medical grounds, can affect the administrative decision under which he was retired.

Learned counsel for the appellant has certainly taken great pains to make out a good case for her client on compassionate grounds. But as soon as the case came to be tested on legal considerations in the course of the argument, it became apparent that there was no legal ground upon which it could be successfully argued.

*The judgment appealed against appears at p. 303 post.

The question of applicant's present state of health, as well as the other circumstances which would support his request for re-employment now, as a fireman, will, we believe, be sympathetically considered by the proper authority on whom the responsibility rests for making the decision for his re-employment or otherwise. This Court is not in a position to express any view on applicant's fitness for re-appointment; and can do no more about it than extend the sympathy already expressed, in the circumstances, for his numerous family.

As stated by the President, the appeal cannot succeed and must be dismissed. There will be judgment and order accordingly.

MR. TALARIDES: I claim no costs.

COURT: No order as to costs.

*Appeal dismissed. No order
as to costs.*

JUDGMENT OF TRIAL COURT.

The judgment appealed against given by Munir J., reads as follows:—

“MUNIR, J.: By this recourse under Article 146 of the Constitution, which was filed on the 30th May, 1963, the Applicant applies for:—

‘(A) An order of the Honourable Court that the decision of the Minister of Interior not to re-employ the Applicant in the Fire Brigade Service is *null* and *void*.

‘(B) Declaration that the omission of the Respondents not to re-employ the Applicant in the Fire Brigade Service, where he was a permanent employee, is *null* and *void* and of no effect whatsoever’.

The Applicant, who is 40 years of age and is married with eight children, joined the Fire Service on the 9th May, 1955. At the time of his appointment to the Fire Service the Applicant signed a declaration form to the effect that he had no debts. The Applicant was in fact in debt, but had not disclosed this fact at the time of his joining the service.

As a result of disciplinary proceedings taken against the

Applicant in 1959, the Applicant promised to pay all his debts and for this purpose he agreed to the deduction of £22 from his monthly salary until his debts were paid. The Applicant denied, however, ever having signed a power of attorney authorizing the then Head of the Police to make monthly deductions from his salary.

The Applicant had been reporting sick as far back as 1957 and in December, 1959, he was given sick-leave on account of a duodenal ulcer and subsequently had to be detained in hospital for treatment for ten days. On the 25th January, 1960, the Applicant was examined by the District Medical Officer, who was of the opinion that the Applicant was unfit for duty in the Fire Service on account of the duodenal ulcer, from which he was suffering. The Applicant was eventually examined by a Medical Board on the 22nd February, 1960, which also found him to be suffering from a duodenal ulcer and 'unfit for further duties'. As a result of this, approval was given by the Governor-in-Council in 1960 for the Applicant to be retired from the service on medical grounds under section 6(e) of the Pensions Law with effect from the 1st September, 1960, and the Applicant was duly retired as from that date.

Since his retirement the Applicant has made repeated applications to the Ministry of Interior asking to be "reinstated" in his former post and on each occasion the reply has been in the negative. The last of these applications by the Applicant was dated the 3rd April, 1963 and the reply from the Ministry of Interior stating that his request cannot be granted, is dated the 24th April, 1963. With this last application of the 3rd April, 1963, the Applicant enclosed a medical certificate from a Dr. Loizos K. Psatha to the effect that he was now fit.

At the hearing of this Case the Applicant was not represented by counsel. Having at first requested the Court for an adjournment in order to enable him to engage an advocate, he eventually informed the Court that owing to his financial and other difficulties it would probably be difficult for him to obtain a lawyer, even if an adjournment were to be granted, and requested the Court to proceed with the hearing of the Case.

The Applicant does not appear to question or dispute, either by his Application or at the hearing, the legality or

validity of his retirement, as such, on medical grounds under section 6(e) of the Pensions Law (Cap. 311). The gist of the Applicant's case, as I understand it, is that he was being victimized by Mr. Zachariades of the Fire Service for political reasons and that his illness which resulted in his ultimate retirement from the Fire Service was brought about as a result of such victimization and persecution and particularly on account of the punishment which was inflicted on him which had necessitated his performing extra duties for 6 hours for 21 days at the end of a continuous period of 24 hours duty. Furthermore, the Applicant submitted that as his services were terminated by the former Colonial Government for political reasons he should be reinstated again by the Republic under the Reinstatement of Government Employees Law (No. 48/61). The Applicant denied that he drank heavily or that he gambled or that he was heavily in debt.

Counsel for the Respondent submitted at the outset that the last communication from the Minister of the Interior of the 24th April, 1963, did not, in fact, convey a new decision, as such, but was merely a repetition of an earlier decision, which the Minister had taken on the 8th January, 1963, as a result of an earlier application made to the Minister on the Applicant's behalf by an advocate on the 31st December, 1962, to which was attached a medical certificate from Dr. Glafkos M. Michaelides stating that the Applicant was 'healthy and fit for work'. Therefore, the period of 75 days required under paragraph 3 of Article 146 of the Constitution should, in fact, be calculated not from the 24th April, 1963, but from the 8th January, 1963.

On this question as to the recourse being out of time, which was only raised for the first time at the hearing of the Case, I am prepared to accept, for the purposes of this recourse, and in all the circumstances, that the Applicant's last application to the Minister of the Interior of the 3rd April, 1963, was made *bona fide* for the purpose of obtaining a reconsideration of his Case and of obtaining a new decision and was not merely written for the purpose of circumventing the provisions of paragraph 3 of Article 146 and for obtaining an extension of time. This being so, I am prepared to accept, on the facts of this particular case, that the letter of the 24th April, 1963, from the Minister of the Interior was conveying to the Applicant a decision which, in itself, could form the subject-matter of a recourse under Article 146. I, therefore,

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find that this recourse is not out of time for the purposes of paragraph 3 of Article 146.

Counsel for the Respondent subsequently submitted that the Applicant had been properly retired on medical grounds under the Pensions Law and that his service with the Government was duly terminated at the time. The services of the Applicant thus having been terminated there was no obligation, he submitted, on the part of the Minister of the Interior to re-employ the Applicant. He further submitted that as it had been conclusively established that the cause of the termination of the Applicant's services was his retirement on medical grounds and not for political reasons, the Reinstatement of Government Employees Law (No. 48/61) did not apply to the Applicant. As to the Applicant's allegations that his illness had been brought about by his victimization, and the punishment which he received, whilst in the Fire Service, counsel for Respondent submitted that no connection had been established between the circumstances and conditions of the Applicant's employment in the Fire Service and his illness.

Having found that the recourse is not out of time, the issue to be determined in this Case is really quite a simple one, namely, whether the decision of the Minister of the Interior not to employ the Applicant, after his retirement from the Fire Service on medical grounds, was properly and validly taken on the facts, and in the circumstances, of this case.

I should state here that I am fully satisfied from all the evidence before this Court and particularly from the report of the Medical Board dated the 23rd February, 1960, that the cause of the Applicant's retirement from the Public Service was the fact that he was not medically fit to continue in the Fire Service and there is no evidence to show that the Governor-in-Council, in considering the Applicant's case under section 6(e) of the Pensions Law, was motivated by political or other improper considerations. Furthermore, the Applicant has not established to the Court's satisfaction that Mr. Zachariades was influenced by any political considerations in his dealings with the Applicant whilst in the Fire Service. The Applicant does not dispute that he was suffering from a duodenal ulcer prior to his retirement from the Service, nor does he suggest that the independent members of the Medical Board both of whom were reputable professional men would

have any ulterior motive, political or otherwise, in wishing to terminate the Applicant's services improperly and under the guise of medical grounds.

With regard to the Applicant's allegation that his illness had been brought about as a result of the treatment which he received whilst in the service, the Applicant has not been able to satisfy the Court that this was in fact so, and I am not satisfied, for the purpose of this recourse, that the Applicant's illness was brought about as the result of the terms and conditions of his employment in the Fire Service. The Court is not concerned, in this recourse, with the question of whether the provisions of Regulation 27 (dealing with officers retiring on account of injuries received in the actual discharge of their duties) of the Pensions Regulations (contained in the Schedule to Cap. 311) are applicable to the Applicant.

Having found that the cause of the Applicant's retirement from the Fire Service was the fact that, under section 6(e) of the Pensions Law, it was considered that he was incapable by reason of illness to discharge his duties, and having found that such retirement was not due to political reasons, I am of the opinion that Law No. 48/61 can have no application in this Case.

The 're-instatement' or 're-employment' which the Applicant seeks is, in effect, a request to receive *de novo* a new appointment in the Public Service. It has not been suggested by the Applicant that a particular vacancy exists in the Service for which he has applied. There is no mandatory duty on the part of the Minister of the Interior to appoint to the Fire Service, or to any other branch of the Police Force, any person who happens to apply for such appointment and nor is there a corresponding right in every citizen to receive such appointment merely by applying for it.

I am satisfied in all the circumstances, that the Minister of the Interior, in deciding not to grant the Applicant's request to be employed in the Fire Service, did not act improperly and in so doing was not acting unconstitutionally, illegally or in excess or in abuse of his powers.

For the reasons given above I am of the opinion that this Application cannot succeed and is dismissed accordingly.

Application fails and is dismissed accordingly".

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