

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ALECOS PAPAPETROU.

—  
ALECOS  
PAPAPETROU  
v.  
REPUBLIC  
(BOARD FOR  
REINSTATEMENT  
OF DISMISSED  
PUBLIC OFFICERS)

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE BOARD FOR REINSTATEMENT OF DISMISSED  
PUBLIC OFFICERS,

*Respondent.*

(Case No. 70/66)

*Public Officers—Dismissed public officers—Reinstatement—Cyprus Police Force—Claim for reinstatement under the Dismissed Public Officers Reinstatement Law, 1961 (Law No. 48 of 1961)—Refusal of Applicant’s claim for such reinstatement in the Cyprus Police Force—Because he had not been discharged from the Police Force for “political reasons” as defined in the said Law (supra), but for inefficiency—It was open on the facts to the Respondent Board to refuse and reject the said claim—Evaluation of all relevant facts by the Respondent Board—Nothing wrong with such evaluation.*

*Cyprus Police Officer—Dismissed officer—Reinstatement—See above.*

*Dismissed Public Officers—Reinstatement—Law No. 48 of 1961 (supra)—See above.*

*Reinstatement—Reinstatement of public officers dismissed for political reasons—See above.*

The facts sufficiently appear in the judgment of the Court dismissing the recourse, under Article 146 of the Constitution, made by the Applicant whereby he complains against the refusal of the Respondent Board to reinstate him in the Cyprus Police Force under the Dismissed Public Officers Reinstatement Law, 1961 (Law No. 48 of 1961).

**Recourse.**

Recourse against the decision of the Respondent to refuse to Applicant reinstatement as an entitled officer, under the

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provisions of the Dismissed Public Officers Reinstatement Law, 1961 (Law 48/61)

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*Ph. Clerides* for the Applicant.

*L. Loucaides*, Counsel of the Republic, for the Respondent.

*Cur. adv. vult.*

The following Judgment was delivered by:

TRIANTAFYLLIDES, J.: By the first claim in the motion for relief in the Application the Applicant complains against the decision of the Respondent to refuse to him reinstatement as an entitled officer, under the provisions of the Dismissed Public Officers Reinstatement Law, 1961 (Law 48/61).

By the second claim in the motion for relief the Applicant complains against the omission of the Respondent to reinstate him. In view of the fact that on Applicant's claim for reinstatement a definite decision has been taken by Respondent, in the exercise of its relevant discretionary powers under Law 48/61, there could arise no question of an omission existing on the part of Respondent either to deal with Applicant's claim for reinstatement or to reinstate the Applicant. It follows that the second claim in the motion for relief is not a well-founded one and cannot succeed in any case.

The history of relevant events appears, on the basis of the material before the Court, to be as follows:

The Applicant enlisted in the Police as a constable in 1953.

In June, 1956, the Commissioner of Police decided to discharge the Applicant, as being a constable unlikely to become efficient (see blue 60 in the personal file of the Applicant, *exhibit 1*).

Two years later, on the 15th November, 1958, a detention order was made against Applicant, under the then in force Detention of Persons Laws (see *exhibit 3*). It is not in dispute at all that the said order was made against the Applicant because he was considered to be a member of EOKA, the organization which since the 1st April, 1955 had been waging a Liberation Struggle against the then colonial Government of Cyprus. As a result the Applicant was detained in a detention camp for some time.

It is common ground that before his discharge from the Police the Applicant was rendering assistance to EOKA, and that he was particularly in a position to do so because he was being employed, while stationed in Limassol, as a Police wireless operator.

As it appears from the relevant file of the Respondent (see *exhibit 2*), on the 5th December, 1961, the Applicant applied to Respondent for reinstatement under Law 48/61. His application was turned down and he was informed accordingly by letter dated the 18th July, 1962.

On the 18th December, 1962, the Applicant filed recourse No. 310/62 against the Respondent's decision to refuse his application for reinstatement. The said recourse was withdrawn upon an undertaking by the Respondent to re-examine the matter.

Such re-examination having duly taken place the *sub judice* decision was communicated to the Applicant by letter dated the 28th January, 1966; copy of this letter is attached to the Application in this recourse. It was decided not to treat the Applicant as an entitled officer, under Law 48/61, because it was found that he had not been discharged from the Police for "political reasons" — as such reasons are defined in Law 48/61 — but for inefficiency.

It is obvious that the date of the aforesaid letter — the 28th January, 1966 — is an erroneous one, because the decision which it purported to convey to the Applicant was reached on the 31st January, 1966 (see *exhibit 2*); therefore, it must have been written on or after such decision and it was antedated in error; — it has never been suggested by the Applicant, in these proceedings, that the letter in question was either actually written before the relevant decision had been taken or that it was antedated otherwise than in error.

It has been submitted by counsel for the Applicant that the *sub judice* decision is an erroneous one, having been based on factual misconceptions and being the result of an insufficient enquiry on the part of Respondent into the correct facts of the case; it has been contended that in actual fact the Applicant was discharged from the Police for political reasons.

As it appears from the relevant decision of the Respondent, which is duly reasoned, the conclusion that the Applicant

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had not been discharged for political reasons was reached on the basis of his personal file (*exhibit 1*).

A perusal of such file shows that as far back as the 21st February, 1955, the Superintendent of Police in charge of the Limassol Police Division, in which the Applicant was posted, had reported to the Commissioner of Police that the Applicant was not working or behaving satisfactorily and that, therefore, he was unable to recommend that Applicant should receive his next increment. It appears from the contents of the said report (see blue 31 in *exhibit 1*) that the Applicant had been guilty of a number of disciplinary offences and was in general not behaving satisfactorily as a policeman. It is note worthy that this report was made at a time prior to the commencement of EOKA Struggle on the 1st April, 1955.

On the 13th December, 1955, the Applicant applied to be allowed to retire from the Police, as from the 7th March, 1956, on the ground that he intended to emigrate to Africa in order to work there (see blue 44 in *exhibit 1*). The Commissioner of Police decided to refuse the application of Applicant for leave to retire (see blue 47 in *exhibit 1*).

On the 6th March, 1956, the Superintendent of Police in Limassol recommended another withholding of the increment of the Applicant on the ground of unsatisfactory service (see blue 53 in *exhibit 1*).

Then later, on the 7th May, 1956, the said Superintendent reported that the Applicant was working satisfactorily and raised the question of Applicant's increment (see blue 56 in *exhibit 1*).

In reply, the Commissioner of Police opened up the issue of the whole future of the Applicant in the Police; his letter, dated the 10th May, 1956 (see blue 57 in *exhibit 1*) is worth quoting in full because it indicates the considerations which were being examined at the time in relation to the Applicant's service as a policeman:

"S.P. Limassol,

*P.C. 1201 A. Papapetrou*

Reference your letter LL/PP/PC.1201/108 dated 7th May, 1956.

2. The above named constable is due for confirmation as from 7.3.56. He has tried to resign and had, until very recently, a bad conduct sheet. Can you now certify that he

- (i) has really earned his increment;
- (ii) wishes to make the Force his career, and
- (iii) is truly fit for confirmation.

If not, consideration can be given to his discharge as unlikely to become an efficient constable.

3. You must bear in mind that once this constable is confirmed he can only be dismissed as a result of a specific disciplinary offence”.

On the 23rd May, 1956, the Superintendent of Police in Limassol reported to the Commissioner of Police that he had on that date interviewed the Applicant who had told him that he was not willing to make the Police his life career, but that he had to stay in the Police as his application to resign had been turned down. The Superintendent expressed the view that the Applicant was not fit for confirmation (see blue 58 in *exhibit 1*).

On the 18th June, 1956, the aforesaid Superintendent again reported that the Applicant was not working satisfactorily because he wanted to leave the Police (see blue 59 in *exhibit 1*); he did not recommend Applicant for confirmation.

As a result the Commissioner of Police decided on the 21st June, 1956, that Applicant should be discharged from the Police.

On the basis of the personal file of the Applicant, it was reasonably open, in my opinion, to the Respondent to reach the conclusion that the Applicant was discharged from the Police for unsatisfactory service; there was nothing in such file to even suggest that his discharge was due, in any way, to political reasons or that his service was deemed to be unsatisfactory in view of political activities of his connected with the EOKA Struggle.

It is a fact that since before his discharge the Applicant had been rendering assistance to EOKA. The crucial factor,

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however, is not whether or not he was rendering such assistance, but whether or not the British Authorities at the time knew of this and were led *because* of this to discharge him from the Police. There was nothing before the Respondent to lead to such a conclusion; and I do fail to see, in the light of the circumstances of this Case, what any further inquiry on the part of Respondent could have usefully produced.

I have considered whether it is possible that the British Authorities knew, at the time of the Applicant's discharge in 1956, about his activities which led to the making of the detention order against him in 1958, and proceeded to discharge him because of such activities, even though this was not stated to be so in his personal file. But the date of the said detention order is about 2½ years subsequent to the date of the discharge of the Applicant from the Police and if the British Authorities at the time of such discharge knew of Applicant's activities in support of EOKA no doubt the relevant detention order would have been made much earlier.

For all the above reasons I find that I cannot interfere with the *sub judice* decision of Respondent. The evaluation of all relevant facts, for the purpose of applying thereto the provisions of Law 48/61, was a matter for the Respondent, and I can find nothing wrong with such evaluation. This recourse, therefore, fails and has to be dismissed.

In view, however, of the fact that it is the second recourse which the Applicant has had to make in relation to his claim for reinstatement — and this through no fault of his own — I have decided to make no order as to costs in these proceedings.

*Application dismissed.  
No order as to costs.*