

1969

Mar. 19

—
GEORGHIOS
KAKOURAS
v.
REPUBLIC
(COUNCIL
OF MINISTERS
AND ANOTHER)

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS KAKOURAS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE COUNCIL OF MINISTERS,
2. THE COUNCIL FOR THE REINSTATEMENT
OF DISMISSED PUBLIC SERVANTS,

Respondents.

(Case No. 113/68).

Public Officers—Dismissed public officers—Reinstatement—Entitled officers—The Dismissed Public Officers Reinstatement Law, 1961 (Law No. 48 of 1961) sections 2 and 3(1) and (2)—Policeman's resignation from the Police Force not exclusively due to political reasons—Recourse against decision dismissing his claim for reinstatement under the provisions of the aforesaid Law—Respondent Council for the Reinstatement of Dismissed Public Servants could reasonably have come to the conclusion they did come—Not acting either under a misconception of fact or the law—Recourse dismissed—See also herebelow.

'Entitled officer' ('Δικαιούμενος υπάλληλος')—Section 2 of the said Law No. 48 of 1961—Council for the Reinstatement of Dismissed Public Officers established under section 3(1) of the same Law—Application to the Council for reinstatement—Onus on the Applicant to satisfy the Council that he is an "entitled officer" within the said Law supra—Council entitled to evaluate the evidence before it—See also above.

The facts sufficiently appear in the judgment of the Court.

Recourse.

Recourse against the decision of Respondent 2 to the effect that Applicant was not an "entitled officer" within the provisions of the Dismissed Public Officers Reinstatement Law, 1961 (Law 48 of 1961).

D. Papachrysostomou, for the Applicant.

L. Loucaides, Counsel of the Republic, for the Respondents.

Cur. adv. vult.

The following judgment was delivered by:-

HADJIANASTASSIOU, J.: - In this recourse under Article 146 of the Constitution, the Applicant seeks to challenge the validity of the decision of the Respondent No. 2, communicated to him by a letter dated March 11, 1968, that he was not an "entitled officer" within the provisions of the Dismissed Public Officers Reinstatement Law 1961 (Law 48/61).

The material facts are as follows:-

The Applicant joined the Cyprus Police Force in 1948 and, when his term of service was expiring on September 21, 1953, he signed a form for re-engagement for constables, on the 28th of the same month, expressing his wish to be re-engaged for a further period of 5 years as from September 21, with a salary scale 242x12 - 326x15 - 386.

On July 10, 1954, he wrote to the then Colonial Secretary on the question of revision of salaries, and in his letter he says:

"I have the honour to refer to your circular No. 1200 of the 26th June, 1954, and to the Memorandum (with Appendices) accompanying it on the subject of the revision of salaries and the new terms of service and to inform you that I wish to retain my existing salary scale, to retain any residual bonus in accordance with the rule 5 of the rules set out in your circular No. 1022 of the 12th May, 1951, to be paid cost of living allowance in accordance with the terms of your circular No. 955 of the 5th December, 1949 and any other circulars amending or substituted for the same and to receive temporary rent allowance for so long as this allowance is granted by Government. I fully understand that this option, once made is irrevocable". See blue 49 in his personal file.

On February 22, 1955, the then Superintendent of Police Mr. Bush writing to the Commissioner of the Police about the conduct of the Applicant had this, *inter alia*, to say:

"7. This P.C., there is no doubt, is playing a dangerous game of trying to undermine his superiors authority.

1969
Mar. 19
—
GEORGHIOS
KAKOURAS
v.
REPUBLIC
(COUNCIL
OF MINISTERS
AND ANOTHER)

1969

Mar. 19

—

GEORGHIOS
KAKOURAS

v.

REPUBLIC
(COUNCIL
OF MINISTERS
AND ANOTHER)

8. His attitude whilst here about this period was one of deceit. He even behind my back went to see the Staff Officer at Police H.Q., to complain, unbeknown to me. I rang up the Staff Officer to ask him if this was true and he confirmed.

9. At no stage did he complain of his treatment to me. He was allowed every facility except that he was not allowed to leave the barracks owing to his mischievous character, which is quite obvious as can be seen in his personal file.

10. If he is permitted to take a private action against a Superintendent, the whole of the discipline of the Force will suffer, as I am sure you will appreciate". See blue 66.

On March 1, 1955, the Applicant was charged on two counts and as he pleaded not guilty evidence was heard. He was found guilty on both counts and was sentenced by S.P. of Nicosia to 10 days C.B. on count 1, and a warning on count 2. This was the background of the Applicant in the police force when he wrote to the Commissioner on April 13, 1955:

"I will be very pleased if you abolished me from the Force, as I am seriously sick, suffering from diabetes mellitus, nevralgia and kidney colic".

A medical certificate was attached to the application signed by Dr. Dervis, (*blue 82*) who in effect was advising the Applicant to resign his post and make a choice of a new profession which was not so tiring.

On April 14, 1955, the Superintendent of Nicosia Police in submitting Applicant's application to the Commissioner, he wrote:

"Forwarded and recommended that he be discharged. He is quite useless and always troublesome". See blue 81.

On May 9, 1955, the Applicant was examined by a medical board and although he was found suffering from renal diabetes, in their opinion the Applicant was capable of discharging the duties of his office. This report was signed by Drs. Fessas D.M.O., and M. Hadjiminias M.O. both of Nicosia. See blue 86.

On August 3rd, 1955, the Applicant wrote to the Commissioner of Police:

“ Reference to my application of the 13th April, 1955 I have the honour to reapply asking my abolishing from the FORCE.

As I stated, I am sick suffering with diabetes, mellitus, nevralgia and kidney colic.

I ask my abolishing from the FORCE, without having demands from the Government.

In addition to the above, I bring to your notice that my property is going to be destroyed as I am the only person who looks after it, my father now is not able to look after it, due to his age.

If you will not abolish me, I will fall in DEBTS and my property will be sold.”

On August 5, Mr. Bush wrote to the Superintendent of Police, Nicosia:

“ With reference to the letter of P.C. 963 George P. Kakouras dated 3rd August, 1955, applying for permission to resign his post in the Force, please inform this constable that I accept his resignation with effect from 6.8.55”. See blue 94.

On August 11, 1955 the Applicant on his discharge was paid all of his emoluments up to the 5th August, 1955 as well as his deposits under section 14(1) of the Government Employees Povident Fund Law.

On February 4, 1959, the Chief Constable of Cyprus was writing to the Applicant in these terms:

“ I enclose herewith the above quoted medal which you have earned in respect of your service with the Cyprus Force for your retention”. See blue 95.

On February 10, the Applicant having established himself as a general importer, he replied that he was unable to accept the general service medal dispatched to him because he was ashamed to repeat that he had served in the police force.

When the Dismissed Public Officers Reinstatement Law 1961 (No. 48/61) was enacted the Applicant applied to the Council for reinstatement as an entitled Officer under the provisions

1969
Mar. 19

—
GEORGHIOS
KAKOURAS
v.
REPUBLIC
(COUNCIL
OF MINISTERS
AND ANOTHER)

1969
Mar. 19
—
GEORGHIOS
KAKOURAS
v.
REPUBLIC
(COUNCIL
OF MINISTERS
AND ANOTHER)

of that Law. On July 18, 1962, he received a reply informing him that his application has been turned down. Feeling aggrieved, he filed in the Supreme Court a recourse No. 226/62. This recourse, however, was withdrawn, as the Respondent Council undertook to re-examine the case of the Applicant. Applicant's case was re-examined, but again the Council reached the same decision that he was not an "entitled officer". The Applicant feeling once again aggrieved, filed a recourse No. 66/66.

On September, 1966, during the hearing of that case, both the Applicant and the Chief Superintendent of the Police gave evidence in Court. On December 27, 1966, Dr. Dervis was also heard; and on January 1967, counsel for the Applicant withdrew the recourse, when counsel on behalf of the Council made a statement to the effect that the Council was ready to re-examine afresh the claim of the Applicant in the light of the material before it. See *exhibit 1*.

The Council having re-examined again the case of the Applicant, in the light of all the material before it, including the evidence given before the trial Court issued their reasoned decision on November 11, 1967, dismissing his application. See *exhibit 3*.

On March 11, 1968, the Chairman of the Council wrote to the Applicant in these terms:—

«1. Έχουμε πεισθή ότι αι δραστηριότητες η αι ενέργειαι σας κατά την περίοδον από της 1ης Ἀπριλίου, 1955, και μέχρι της 6ης Αύγουστου 1955, ημερομηνίας της παραίτησώς σας δέν δύναται να θεωρηθούν ως συμμετοχή άμέσως η έμέσως είς τόν Ἀπελευθερωτικόν Ἀγώνα ό όποίος διεξήγετο υπό της ΕΟΚΑ και όπωσδήποτε ούτε υπάρχει έπιβεβαίωσις ότι αι τότε Ἀγγλικαι Ἀρχαι είχον λάβει γνώσιν τών δραστηριοτήτων σας ως ό Ισχυρισμός σας.

2. Είμεθα της γνώμης ότι ουδεμία βία έξησκήθη υπό τών Ἀρχών διά την υποβολήν τών αίτήσεών σας διά παραίτησιν ημερομ. 13ης Ἀπριλίου 1955, και 1ης Αύγουστου 1955, και ούτε και υπάρχει έπιβεβαίωσις ότι η έκ μέρους τών τότε Ἀρχών άποδοχή της παρακλήσεώς σας διά παραίτησιν έκ της ύπηρεσίας ύπηγορεύθη έκ λόγων πολιτικών.

3. Βάσει πάντων τών ύπαρχόντων στοιχείων προκύπτει ότι αυτόβούλως υπεβάλατε τās έν λόγω αίτήσεις διά παραί-

τησιν· ἐκ τῆς ὑπηρεσίας διὰ προσωπικούς λόγους καὶ ὁπωσδήποτε οὐχὶ διὰ πολιτικούς λόγους.

4. Οὕτω τὸ Συμβούλιον ἐν ὄψει τῶν ἀνωτέρω καὶ πάντων τῶν ἐνώπιον αὐτοῦ τεθέντων στοιχείων ἔχει πεισθῆ ὅτι ἡ παραίτησις δὲν ὤφειλετο εἰς πολιτικούς ἀποκλειστικῶς λόγους ἀλλὰ εἰς αὐτόβουλον ἐπιθυμίαν παραιτήσεώς σας καὶ συνεπῶς δὲν κέκτησθε τὴν ιδιότητα τοῦ δικαιομένου ὑπάλληλου».

On April 8, 1968, Applicant filed the present recourse attacking the decision of the Council contained in the letter (*exhibit 2*). Counsel on behalf of the Applicant has contended that the Respondent Council has acted under a misconception of facts and that their conclusions that the Applicant was not an "entitled officer" were arbitrary in view of the evidence before them.

Counsel for the Respondents, on the contrary, has contended that it was for the Council to evaluate the facts and that it was reasonably open to them to reach the conclusion which they did in this case.

I consider it constructive to deal first with the definition section of Law 48/61. Section 2, so far as relevant, is in these terms in Greek:

«Δικαιούμενος ὑπάλληλος» σημαίνει δημόσιον ὑπάλληλον ὅστις κατὰ τὴν καθωρισμένην περίοδον -

- (α) ἀπελύθη ἢ οὐτινος ἐτερματίσθησαν αἱ ὑπηρεσίαι ἢ
- (β) ἐγκαταλείψας τὴν δημοσίαν ὑπηρεσίαν ἐλογιζέτο ἀπολυθεὶς ἢ
- (γ) ἀφυπηρέτησεν ἀναγκαστικῶς ἢ
- (δ) ὑπεβιβάσθη, ἀποκλειστικῶς ἐκ λόγων πολιτικῶν

‘καθωρισμένη περίοδος’ σημαίνει τὴν περίοδον μεταξὺ τῆς 1ης Ἀπριλίου, 1955, καὶ τῆς 19ης Φεβρουαρίου, 1959, ἀμφοτέρων τῶν ἡμερομηνιῶν περιλαμβανομένων

‘πολιτικοὶ λόγοι’ σημαίνει πάντα λόγον ἀφορῶντα εἰς τὴν πραγματικὴν ἢ ὑποτιθεμένην συμμετοχὴν εἰς τινα ἢ προσεταιρισμὸν μετὰ τινος, ὁμάδος ἢ ὀργανώσεως λογιζομένης ὑπὸ τῆς τότε Κυβερνήσεως τῆς Ἀποικίας τῆς Κύπρου ὡς προαγούσης πολιτικούς σκοπούς ἢ εἰς τὴν πραγματικὴν ἢ

1969
Mar. 19

—
GEORGHIOS
KAKOURAS
v.
REPUBLIC
(COUNCIL
OF MINISTERS
AND ANOTHER)

1969
Mar. 19
—
GEORGHIOS
KAKOURAS
v.
REPUBLIC
(COUNCIL
OF MINISTERS
AND ANOTHER)

υποτιθεμένην συμμετοχήν, άμέσως ή έμμέσως, εις ένεργείας λογιζομένας ύπό τής τοιαύτης Κυβερνήσεως ώς ύποκινουμένας έκ κινήτρων πολιτικών».

The English translation reads:

“ ‘entitled officer’ means a public officer who at the prescribed period –

- (a) was dismissed or whose services were terminated or
- (b) having left from the Public Service was considered as dismissed or
- (c) retired compulsorily or
- (d) was demoted; exclusively due to political reasons;

‘prescribed period’ means the period between the 1st April, 1955, and the 19th February, 1959, both dates inclusive; ‘political reasons’ means every reason relating to the real or presumed participation in or association with a certain group or organization considered by the then Government of the Colony of Cyprus as promoting political objects or to the real or presumed participation directly or indirectly in activities considered by such Government as instigated by political motives”.

Section 3, sub-ss., 1 and 2 read:–

«3.(1) Καθιδρύεται Συμβούλιον συγκείμενον έκ τριών μελών διοριζομένων ύπό του Ύπουργικοῦ Συμβουλίου (έξ ών εις όρίζεται ώς ό «Πρόεδρος» του Συμβουλίου) όπερ έξετάζει και άποφαινεται έάν πρόσωπόν τι είναι δικαιούμενος ύπάλληλος.

(2) Το Συμβούλιον καθορίζει την ύπ’ αυτού άκολουθητέαν διαδικασίαν και άπασαι αι άποφάσεις αυτού λαμβάνονται δια πλειοψηφίας».

I now propose to quote at length from the evidence of the Chief Superintendent Petros Andreou, given in Case No. 66/66. See *exhibit 4*:

“ I know the Applicant since 1955. At the time, Applicant was a police constable; he was under my orders.

As I was receiving all the time weekly reports which seemed to be against Applicant, both from the police service

point of view and from the political point of view, I went and found him in the police dormitory and sat down and talked with him and suggested to him to submit his resignation. I told him that I had information that Turkish policemen were planning to kill him; I had earlier advised him to sleep by himself in an upstairs room in the police station, so as to ensure his safety. The main reason why the Turks in the police were against him were for political reasons because Applicant was very outspoken while in the police station.

1969
Mar. 19
—
GEORGHIOS
KAKOURAS
v.
REPUBLIC
(COUNCIL
OF MINISTERS
AND ANOTHER)

The Divisional Commander, Superintendent Bowring, whose assistant I was, was indicating to me indirectly, through the minutes he was making, and the comments he was making, on the relevant reports, that he wanted to get Applicant out of the police because of his activities.

In one of the reports, which I had seen in relation to Applicant, I saw that he was reported to have been seen going in and out of the Archbishopric”.

In answer to counsel for Respondent:

“From what Mr. Bowring used to tell me personally and from the minutes he was making on the reports relating to Applicant it was clear to me that he wanted to get him out of the police. On more than one occasion, when Mr. Bowring was handing me an adverse political report in relation to Applicant’s conduct, he would say: ‘The sooner we get rid of this man the better; we are fed up with this man’. Thus I concluded that he wanted him out of the police for political reasons. Nearly all the adverse reports against Applicant were for political activities. They were so suspicious of Applicant for political activities, that he was practically confined in the police station. He was not given ever duties outside. When he used to go out for personal reasons he was being followed, even when he was going for lunch”.

Later he says:

“As far as I know, Mr. Bowring never told this to him directly. Mr. Bowring, however, indicated to me that I should suggest to Applicant to resign.

All which I say regarding what happened in relation

1969
Mar. 19

—
GEORGHIOS
KAKOURAS
v.
REPUBLIC
(COUNCIL
OF MINISTERS
AND ANOTHER)

to the resignation of Applicant, relate to the period from June 1955 onwards, since I was posted in Nicosia.

It is correct that Mr. Bowring told me to suggest to Applicant to resign; I understood him to convey this when he said: 'The sooner I get rid of him, the better'.

Questioned further he said:

"When I said that I had information that Turkish police men were planning to kill Applicant, I must explain that I had information that Turkish policemen were planning to kill Greek members of the police force. I did not have direct information that they were planning to kill Applicant, but, in view of his activities, I reached the conclusion that he was one of those whom they were planning to kill. To Applicant I simply told that I had information that Turkish policemen were planning to murder him. I did not explain how I came to reach the conclusion that the Turks were planning to kill him. I cannot say how seriously he took the information which I gave him, but the fact he accepted my suggestion to sleep by himself in an upstairs room may be of some significance. I mentioned this fact, that I had information that Turkish policemen were planning to kill him, to Applicant, I think, in July, 1955, for the first time".

In answer to counsel for Applicant:

"Mr. Bowring never let it be implied that if Applicant did not resign he might have to face certain consequences".

In answer to the Court:

"I would like to make it clear that Mr. Bowring did not tell me in as many words to tell the Applicant to resign; from the way he was saying things to me I understood that he wanted to get rid of him, to resign".

Pausing here for a moment I would like to confess that when reading the evidence of this witness during the hearing of this case, I was left with the impression that the evidence in some way was supporting the case of the Applicant that his resignation might also be due to compulsion put upon him by the then police force authorities for political reasons. But, after having had the advantage of reviewing the evidence and having in mind the answer of the witness given to the Court, in the

case No. 66/66, I have reached the conclusion that the evidence of Mr. Andreou was the result of his impression and nothing more, that Mr. Bowring wanted to get rid of the Applicant for political reasons.

The case of the Applicant was that he was forced to apply for permission to resign from the Police Force, because of his nationalistic activities and because the police authorities were aware that he was giving information to the Archbishop.

1969
Mar. 19
—
GEORGHIOS
KAKOURAS
v.
REPUBLIC
(COUNCIL
OF MINISTERS
AND ANOTHER)

I would like to read extracts from his evidence:

“As I was constantly being forced by my superiors to take part in dispersing demonstrations, I sought the advice of the then Archbishop of Cyprus, who is now the President of the Republic, and he advised me to resign from the Police, saying that he would need my services”.

In answer to counsel for Respondent he said:

“They were sending me to join in the dispersal of demonstrations, even before the making by me of the first application to resign in April 1955. I could not stomach this and I decided to leave the police force. My superiors started suspecting me because I was finding excuses to avoid joining in dispersing demonstrations; I was malingering, making myself ill by smoking cigarettes with pepper, and in other ways getting out of it.

.....
Even before I made my first application for resignation in April 1955, my superiors were suspecting me of nationalistic activities and they wanted to find a way to get rid of me from the police; they were exercising various pressures on me to make me leave the police, but they did not agree to let me leave on medical grounds..... They only accepted to let me leave on the second occasion when I applied for leave to resign; on the second occasion, Mr. Andreou helped to have my application accepted.

Before I resigned from the police force, I used to go and render various services to the Archbishop, carrying out errands for him. But after I resigned, I could not continue doing so, because I was suspected by the British and I went to Famagusta, where I remained.”

1969

Mar. 19

—

GEORGHIOS
KAKOURAS
v.
REPUBLIC
(COUNCIL
OF MINISTERS
AND ANOTHER)

Later he says:

“ I did not state all my various activities in relation to the liberation struggle in my applications to the Council for Reinstatement I stated the main events. There are other events even more important perhaps, which I have omitted to state. I could not state everything. It would take a book to write everything”.

It would be observed, that the evidence of the Applicant leaves no room for doubt, that the reasons for which he had applied for permission to retire from the police force on April 13, 1955, and again on August 3,—stating clearly that he had no demands on the Government—were not exclusively for political reasons only, but also for personal reasons including the fact, as he put it, that he was advised by the Archbishop to resign from the Police, because he would need his services.

It is not in dispute, that the object of the law was to give redress to all those public officers who have suffered during the liberation struggle; but the onus remains on the Applicant to satisfy the Council, that he has retired from the Service compulsorily—admittedly not in the narrow technical sense of section 8 of the Pensions Law Cap. 311—because of pressure of compulsion put on him by the then Colonial Authorities, and such compulsion was put on him exclusively for political reasons.

What falls to be determined, therefore, is whether the Council was acting under misconception of facts and under a misconception of the law, and that this has been responsible for its determination that the Applicant was not an “entitled officer”.

With regard to this question, the Council had before it the personal file of the Applicant, the two applications made for the purpose of his reinstatement, his own statement as well as his evidence given before the trial Court, and the evidence of Mr. Petros Andreou in the Case No. 66/66. (See *exhibit 4*).

Having had the advantage of perusing all the evidence before me and having reviewed the determination of the Council, I have reached the view, that it was for the Council to evaluate such evidence, and could reasonably have come to the conclusion to which they did come that the Applicant was not an “entitled officer”. In the light of my finding I am of the

opinion, that the Council was not acting either under a misconception of facts or of the law, and therefore, I would dismiss the submission of Counsel. Having reached this conclusion; I would uphold the decision of the Council, because it cannot be stated that their determination is either contrary to any of the provisions of the Constitution or of the law or made in excess of their powers.

Mr. Loucaides: I do not press for costs.

COURT: Case is dismissed. No order as to costs.

Application dismissed; no order as to costs.

1969
Mar. 19
—
GEORGHIOS
KAKOURAS
v.
REPUBLIC
(COUNCIL
OF MINISTERS
AND ANOTHER)