

1976
July 1

[TRIANTAFYLLIDES, P., STAVRINIDES, L. LOIZOU
A. LOIZOU, MALACHTOS, JJ.]

GEORGHIOS
MITSIDES
v.
CYPRUS
BROADCASTING
CORPORATION

GEORGHIOS MITSIDES,

Appellant,

v.

THE CYPRUS BROADCASTING CORPORATION,

Respondent.

(*Revisional Jurisdiction Appeal
No. 168.*)

Cyprus Broadcasting Corporation—Officers of—Interchange of Posts of Head of Radio Programmes and Television Programmes Divisions—Posts concerned equivalent but not entailing entirely the same duties—Appellant at material time not merely holder of post of Head of Television Programmes Division but was offered, in 1962, and accepted appointment thereto—Irrespective of how sub judice decision formulated, in effect amounted to an interchange of posts—Which deprived appellant of his substantive appointment for an indefinite period of time—Not open to respondent to act as it did—Sub judice decision annulled as having been taken in excess of powers.

Administrative Law—Excess of powers—Decision relating to interchange of posts in Cyprus Broadcasting Corporation—Annulled as having been taken in excess of powers.

The appellant who was the Head of the Television Programmes Division of the respondent Corporation was assigned the duties of the Head of the Radio Programmes Divisions with effect from the 1st June 1971. This assignment was made in pursuance of a decision* of the respondent corporation taken on May 13, 1971 “for the interchange of the duties of the Heads of the Radio Programmes and Television Programmes Divisions, Mr. Char. Papadopoulos and Mr. G. Mitsides”.

At the material time the appellant was not merely the holder of the post of Head of a Division, but he was offered, on April

* Quoted at p. 195 *post.*

23, 1962, and accepted, appointment to the particular post of Head of the Television Programmes Division. A comparison of the schemes of service of that post and of the post of Head of the Radio Programmes Division showed that the two posts concerned were equivalent posts but they were not posts entailing entirely the same duties.

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Upon appeal against the dismissal of the recourse which was directed against the validity of the said decision of the respondent Corporation, the main issue was whether or not the respondent was empowered to take the action complained of by appellant; and intrinsically connected with such issue was the question of what was the true nature of such action. Counsel for the appellant submitted that it was an interchange of posts. On the other hand, counsel for the respondent described it as an interchange of duties; and he submitted, further that it was legitimately open to the respondent to act in the manner complained of because of the provisions of paragraph 5 of "General Notes"* to the schemes of service of the personnel of the respondent, which were adopted in 1969.

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Held, (1) irrespective of how the *sub judice* decision was formulated in effect it amounted to an interchange of posts.

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(2) Even assuming that a provision such as that made by paragraph 5 of the "General Notes" could have been put into force by means of Notes to the scheme of service—as it has been done—and not only by means of Regulations enacted for this purpose, and even assuming that the term "officer" in such paragraph could be construed, in spite of the indication to the contrary in paragraph 2 of the "General Notes", as including a Head of Division of the respondent Corporation, it cannot be said that what has actually taken place, in the present instance, was something envisaged by paragraph 5, because the appellant was not merely called upon to perform "the duties of a relative post of comparative grade" without being deprived of his substantive appointment. What took place was a much more radical and permanent arrangement, which was made for an indefinite period of time and which actually continues to be still in force today, five years later. Also, such arrangement resulted in depriving the appellant of the substantive appointment given to him in 1962, because it amounted, as already found by this Court to an interchange of posts.

* Quoted at p. 198 *post*.

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(3) Consequently, it was not open to the respondent to act in such a manner and, therefore, this appeal must be allowed and the *sub judice* decision of the respondent must be annulled as having been taken in excess of powers.

Appeal allowed. 5

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Hadjianastassiou, J.) given on the 27th October, 1975 (Case No. 288/71) whereby applicant's recourse against the decision of the respondent to assign to him the duties of Head of Radio Programmes was dismissed. 10

- *K. Talarides*, for the appellant.

G. Polyviou, for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by:- 15

TRIANTAFYLLIDES, P.: The appellant has appealed from an in the first instance judgment* of a Judge of this Court in recourse 288/71, by means of which there was dismissed the appellant's claim for the annulment of the decision of the respondent Corporation to assign to him the duties of "Head of the Radio Programmes Division" in the service of the respondent. 20

The said decision was communicated to the appellant by a letter dated May 15, 1971, which reads as follows:-

"Κον. Γ. Μιτσιδην,
Διευθυντήν Προγ. Τηλεοράσεως, 25

Ὡς σᾶς ἀνεκοίνωσα καὶ χθὲς προφορικῶς, ἀπὸ τῆς πρώτης προσεχοῦς Ἰουνίου ἀναλαμβάνετε ἐπισήμως, καθήκοντα Διευθυντοῦ Προγραμμάτων Ραδιοφώνου, κατ' ἀπόφασιν τοῦ Ἰδρύματος.

Ἀναμένω ὅτι ἐν τῷ μεταξύ καὶ θὰ κατατοπίσετε τὸν κ. Παπαδόπουλον καὶ θὰ κατατοπισθῆτε ὑπ' αὐτοῦ ὥστε ἡ μετὰ βαςὶς νὰ γίνῃ κατὰ τὸν πλέον ὀμαλὸν τρόπον καὶ νὰ διαρκέσῃ ὅσον τὸ δυνατὸν ὀλιγώτερον. 30

Α. Χριστοφίδης,
Γενικὸς Διευθυντής." 35

* Reported in (1975) 3 C.L.R. 445.

3 (" Mr. G. Mitsides,
4 Head of the Television Programmes Division,

5 As I have informed you also orally yesterday, as from
the first of next June you will take up officially the duties of
Head of the Radio Programmes Division in accordance
with a decision of the Corporation.

10 I expect that in the meantime you will brief Mr. Papa-
dopoulos, and you will be briefed by him, so that the han-
ding over will be effected in as smooth a manner as possible
and that it will last for as short a time as possible.

A. Christofides,
Director-General").

15 The above letter was written as a result of the following de-
cision which was taken by the Board of the respondent on May
13, 1971, and was as follows:-

38. Έναλλαγή καθηκόντων Διευθυντοῦ Προγραμμάτων.

20 'Ο Πρόεδρος ανέφερεν ὅτι ἐτέθη ὑπ' ὄψιν του σκέψις τοῦ
Γενικοῦ Διευθυντοῦ ὡς καὶ σημείωμα του σχετικῶς μετὴν
ἀναγκαιότητα ἐναλλαγῆς καθηκόντων μεταξὺ τῶν Τμημα-
ταρχῶν Προγραμμάτων Ραδιοφώνου καὶ Τηλεοράσεως κ.κ.
Χαρ. Παπαδοπούλου καὶ Γ. Μιτσίδη.

25 'Ο Πρόεδρος ἐδήλωσεν ὅτι συμφωνεῖ διὰ τὴν ἐναλλαγὴν,
ἐπὶ τῇ βάσει καὶ τῶν βασικῶν στοιχείων διευθυντικῶν μεθόδων
σχετικῶν μετὴν ὑπὸ τὰς ἐκάστοτε περιστάσεις καλύτεραν
δυνατὸν ἀξιοποίησιν τοῦ ἀνωτέρου προσωπικοῦ. Τὰ συζη-
τηθέντα σχέδια τοῦ Ἰδρύματος διὰ τὴν προσεχῆ πενταετίαν
ἐξυπηρετοῦνται ἐπίσης καλύτερον διὰ τῆς ὡς ἀνω ἐναλλαγῆς,
κατέληξε.

30 Τὸ Συμβούλιον, πλὴν τοῦ κ. Παπαγεωργίου, συνεφώνησε
πρὸς τὰς ἐκτεθείσας ἀπόψεις, ἀφοῦ ἤκουσε περαιτέρω διευ-
κρινήσεις δοθείσας ὑπὸ τοῦ Γενικοῦ Διευθυντοῦ. Ἡ ἐναλλαγή
καθηκόντων θὰ πραγματοποιηθῆ ἀπὸ τῆς 1ης προσεχοῦς
'Ιουνίου."

35 (" 38. *Interchange of duties of Heads of the Programmes
Divisions.*

The Chairman stated that there had been put to him an
idea, as well as a memorandum, of the Director-General

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regarding the need for the interchange of the duties of the Heads of the Radio Programmes and Television Programmes Divisions, Mr. Char. Papadopoulos and Mr. G. Mitsides.

The Chairman declared that he agreed to the interchange, in view, also, of basic notions of managerial methods regarding the best possible, under the from time to time prevailing circumstances, utilization of higher ranking personnel. He concluded by saying that the already discussed plans of the Corporation for the next five-year period would, also, be better served by such interchange. 5 10

The Board, with the exception of Mr. Papageorghiou, agreed with the views so expressed after having heard further clarifications which were given by the Director-General. The interchange of duties is to be effected as from the 1st of next June"). 15

The main issue which has been argued in the present appeal is whether or not the respondent was empowered to take the action complained of by the appellant; and intrinsically connected with such issue is the question of what is the true nature of such action. Counsel for the respondent has described it as an interchange of duties; on the other hand, counsel for the appellant has submitted that it was an interchange of posts. 20

Having carefully weighed all relevant considerations we have reached the conclusion that the above submission of counsel for the appellant is right. Irrespective of how the above-quoted letter and decision were formulated, what has, in effect, taken place is an interchange of posts between the appellant, who was at the time the Head of the Television Programmes Division, and Mr. Charilaos Papadopoulos, who was then the Head of the Radio Programmes Division; and, it is rather significant to note, in this respect, that at the end of the relevant written memorandum, which was put before the Board of the respondent, it was stated that the appellant had to be "emplaced in the post" of Head of the Radio Programmes Division ("ἐπιβάλλεται ἡ τοποθέτησις τοῦ κ. Γ. Μιτσίδη εἰς τὴν θέσιν τοῦ Διευθυντοῦ Προγραμμάτων Ραδιοφώνου"). 25 30 35

It should be borne in mind in the above connection that the appellant was not at the material time merely the holder of the post of Head of a Division of the respondent Corporation, but 40

that he was offered, on April 23, 1962, and accepted, appointment to the particular post of Head of the Television Programmes Division.

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Moreover, a comparison of the schemes of service of that post and of the post of Head of the Radio Programmes Division, to which the appellant was moved as a result of the *sub judice* decision of the respondent, shows that the two posts concerned are equivalent posts, but they are not posts entailing entirely the same duties; and we formed this view after examining the relevant schemes of service which were in force in 1962, those which replaced them in 1964, as well as those which were adopted later in 1969.

We are dealing, therefore, with a decision of the respondent Corporation which resulted in the interchange of posts with similar, but not identical, duties.

It has to be examined, next, whether it was possible for the respondent to take such a decision in the exercise of its relevant powers:

It has been very fairly conceded by learned counsel for the respondent that this was not a case of a mere secondment effected under regulation 10 of the Cyprus Broadcasting (Conditions of Service) Regulations, 1966.

He has submitted, however, that it was legitimately open to the respondent to act in the manner complained of by the appellant, and he relied, in support of this submission, on paragraph 5 of what are known as the "General Notes" to the schemes of service of the personnel of the respondent; these "General Notes" were adopted on May 1, 1969, and read as follows:-

“ GENERAL NOTES:

1. The following general conditions and requirements are applicable to all posts within the Corporation and should be considered to form an integral part of the duties and responsibilities contained in the Schemes of Service for all posts.
2. All officers are responsible to the Head of their Division and work under his direction, due regard being paid to hierarchy in each of the sub-sections of each Division.

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3. All officers will also perform any other appropriate duties that may be assigned to them.

4. All officers may be called upon to work in shifts, during weekends and public holidays and outside normal hours.

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5. All officers may be called upon to perform the duties of a relative post of comparative grade in another Division of the Corporation.

6. Holders of posts which carry a higher salary than the scale provided in these Schemes of Service, will maintain their old scale as a personal one to themselves, irrespective of whether they may hold their present post or be offered appointment to another post the salary of which may be lower.

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7. In all cases of promotion candidates must have the written recommendation of the Corporation as to their general fitness for the new post, their character, initiative and general demeanour.

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8. The Corporation reserves the right to keep established posts vacant for a period not to exceed one year unless the post is abolished, and to engage against such post officer in a lower grade or on temporary basis (on contract or wages)."

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It is quite clear that by means of such "General Notes" an effort was made to introduce into all the schemes of service certain terms and conditions applicable to the officers of the respondent.

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Even assuming that a provision such as that made by paragraph 5 of the "General Notes", above, could have been put into force by means of Notes to the schemes of service—as it has been done—and not only by means of Regulations enacted for this purpose, and even assuming that the term "officer" in such paragraph could be construed, in spite of the indication to the contrary in paragraph 2 of the "General Notes", as including a Head of a Division of the respondent Corporation, we cannot agree that what has actually taken place, in the present instance, was something envisaged by paragraph 5; because the appellant was not merely called upon to perform "the duties of a relative post of comparative grade" without

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being deprived of his substantive appointment. What took place was a much more radical and permanent arrangement, which was made for an indefinite period of time and which actually continues to be still in force today, five years later.

5 Also, such arrangement resulted in depriving the appellant of the substantive appointment given to him, as aforesaid, in 1962, because it amounted, as already found by us, to an interchange of posts.

10 Consequently, we do not agree that it was open to the respondent to act in such a manner and, therefore, this appeal must be allowed and the *sub judice* decision of the respondent must be annulled as having been taken in excess of powers.

15 As we have not been invited to treat this case as one of a transfer we do not have to examine, and we leave entirely open, the question of whether or not what has been sought to be done under paragraph 5 of the "General Notes" to the schemes of service could now be accomplished in the exercise of the powers vested in the respondent by section 3 of the Public Authorities (Regulation of Personnel Matters) Law, 1970 (Law 61/70).

20 As regards costs, we have decided, in the light of all relevant considerations, not to award to the appellant the costs of the trial, but we award him, against the respondent, an amount of C£ 50 towards the costs of this appeal.

25 *Appeal allowed. Order for costs as above.*