

1988 May 31

(A. LOIZOU, P.)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS APEITOS,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE CHIEF OF POLICE,
2. THE MINISTER OF INTERIOR,

Respondents.

(Case No. 919/85).

Police Force—Promotions—Temporary promotions—The Police (General) Regulations, 1958, Reg. 10—Promotions for indefinite duration and not for a foreseeable short duration—Annulled—Parpas and Others v. The Republic (1986) 3 C.L.R. 508 adopted.

5 *Police Force—Promotions—Temporary promotions following annulment of permanent promotions—The Police (General) Regulations, 1958, Reg. 10—Such promotions were not made after consideration of merits, qualifications, seniority—Annulled—Parpas and Others v. The Republic (1986) 3 C.L.R. 508.*

10 The Supreme Court annulled a number of promotions to the rank of Sergeant, on the ground that they were made on the basis of invalid regulations.

15 Following such annulment, the interested parties, whose promotions were thus annulled, received temporary promotions to the same rank, but without prior consideration of merits, qualifications and seniority.

This recourse impugns the validity of such temporary promotions, which were made under Reg. 10 of the Police (General) Regulations,

1958.

Held, annulling the sub judge decision: In the light of the decision in Parpa's case (*supra*) the sub judge promotions have to be annulled on the following grounds, namely:

(a) They have not been made after due evaluation of the suitability of those members of the force eligible for promotion. 5

(b) They were made in abuse of power in that they were permanent promotions under the guise of temporariness.

(c) They were not made for any fixed term or for any foreseeable period, but for an indefinite period of time. 10

Sub judge decision annulled.

No order as to costs.

Cases referred to:

Parpas and Others v. The Republic (1986) 3 C.L.R. 508.

Recourse.

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Recourse against the decision of the respondents to promote the interested parties to the rank of Sergeant in preference and instead of the applicant.

K. Talarides, for the applicant.

M. Flourentzos, Senior Counsel of the Republic, for the respondent. 20

T. Papadopoulos, for interested parties *Ch. Charalambides, L. Michael, P. Panayiotou and G. Stavrou*.

P. Papageorgiou, for interested party *A. Kerimi*.

Cur. adv. vult. 25

A. LOIZOU P. read the following judgment. This case had

5 been originally assigned to Mr. Justice Loris. but after his retirement I took its hearing on the 25th January 1988 and direction was made by counsel of the parties that same was to be heard de novo by me and that everything filed already would be deemed to have been filed before me.

10 In Recourse No. 6/85, (See *Herodotou and Others v. The Republic* (1985) 3 C.L.R. 1768), the Supreme Court annulled the promotion of a number of Police Constables to the rank of Sergeant on the ground that they were effected on the basis of invalid Regulations. Following such annulment the Chief of Police invited the Divisional and Unit Police Commanders at a meeting on the 26th July 1985, and handed to them a letter in order to inform accordingly the persons affected. In the course of the same meeting the Chief of Police exchanged views with the Divisional and
15 Unit Commanders with regard to finding the best way of filling the gaps which were unavoidably created. At the above meeting there was, also, placed before the Divisional Commanders a plan for revised establishment of the personnel of the Force which had been prepared recently by a group of officers under the chairmanship of the Deputy Chief of Police.
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25 On the basis of the matters which had been discussed as above, the Divisional Commander recommended that the persons affected, i.e. the interested parties in the said Recourse No. 6/85, be promoted temporarily since there arose the need to assign to them the duties of a higher rank (under Regulation 10) either at the post they were serving at that time, or elsewhere according to the requirements of the establishment referred to above, as being considered suitable to undertake such duties.

30 After considering the said establishment in conjunction with the existing number of the members of the Force at each Unit, the Chief of Police decided to make temporary promotions. Such a step was considered by the Chief of Police indispensable in order to achieve the smooth functioning of the Police Force and avoid the threat of breach of the order, discipline, and good performance of the Force until the permanent resolution of the prob-
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lem. Thereafter the Chief of Police prepared a list of those to whom he intended to assign the performance of duties of a higher rank and sought the approval of the Minister of Interior for their promotion with effect from 12th August 1985. The Minister of Interior, approved the promotions of the constables recommended by the Chief of Police. 5

As against these promotions the applicant filed this recourse by means of which he challenges the validity of the promotions of interested parties Androulla Kerimi, Charalambos Charalambous, Leonidas Michael, Panayiotis Panayiotou, Stavros Stavrou and Georghios Stavrou. 10

According to the opposition in making the sub judice promotions the Chief of Police acted in accordance with the legal advice of the Attorney—General of the Republic dated the 31st May, 1985 (Appendix "D" to the opposition.), which was given in relation to the annulment of the promotions to the rank of Chief Inspector from that of Inspector. The said advice so far as relevant reads: 15

"Εφόσον υπάρχει πράγματι διοικητικό πρόβλημα τέτοιας φύσεως επαφίεται σε σας να εφαρμόσετε το θεσμό των προσωρινών προαγωγών σύμφωνα με τις διατάξεις του κανονισμού 10 των περί Αστυνομίας Γενικών Κανονισμών που δεν έχει τροποποιηθεί μετά το Νόμο 29/1966. Μια τέτοια ενέργεια όμως θα πρέπει να γίνει με βάση νόμιμα κριτήρια άλλως πως κινδυνεύει να ακυρωθεί κατόπιν νέας προσφυγής επηρεαζομένων προσώπων. Σαν αποκλειστικά νόμιμα κριτήρια στη προκειμένη περίπτωση είναι οι πραγματικές ανάγκες της Αστυνομίας και η καταλληλότητα βάσει της αξίας των προσώπων που προτίθεσθε να προάξετε προσωρινά στις εν λόγω θέσεις. Μια τέτοια προαγωγή αποτελεί εντελώς νέα διοικητική πράξη που θα ισχύει από την ημέρα εκδόσεως της και όχι αναδρομικά και θα πρέπει να βασίζεται στα σημερινά πραγματικά γεγονότα (προσόντα, αξία κ.λ.π.) σχετικά με τα πρόσωπα που θα προάξετε ανεξάρτητα από την αξιολόγη- 20
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ση τους που έγινε στο παρελθόν με βάση διαδικασίες που προβλέπονται από τους κανονισμούς που ακυρώθηκαν. Η προηγούμενη λοιπόν αξιολόγηση των προσώπων των οποίων οι προαγωγές ακυρώθηκαν θα πρέπει να αγνοηθεί και να στηρίξετε τη νέα σας απόφαση για προσωρινές προαγωγές στα σημερινά δεδομένα βάσει νέας αξιολόγησης ανεπιτήρεαστης από το γεγονός ότι ορισμένοι από τους υποψηφίους έχουν στο παρελθόν προαχθεί στις ίδιες θέσεις σαν αποτέλεσμα της ακυρωθείσας προαγωγής ή έχουν ασκήσει στη πράξη (σαν αποτέλεσμα των ιδίων προαγωγών) καθήκοντα και εξουσίες στο βαθμό τον οποίο θα διενεργηθούν οι προσωρινές προαγωγές."

("Since indeed there exists an administrative problem of such a nature, it is up to you to apply the device of temporary promotions in accordance with the provisions of Regulation 10 of the Police (General) Regulations, which has not been amended by means of Law 29/1966. Such an act, however, has to be effected on the basis of lawful criteria for otherwise it runs the risk of being annulled upon a new recourse by the persons affected. The exclusive lawful criteria in the instant case are the actual needs of the police and the suitability on the basis of the merit of the persons whom you intend to promote temporarily to the said posts. Such a promotion constitutes entirely a new administrative act which will be effective from the date of its issue and not retrospectively and must be based on the present facts (qualifications, merit, etc.), relating to the persons who will be promoted independently of their past evaluation on the basis of the procedures envisaged by the Regulations which were invalidated. Therefore the previous evaluations of the persons whose promotions have been annulled should be ignored and your new decision for temporary promotions should be founded on present day realities on the basis of a new evaluation unaffected by the fact that some of the candidates had in the past been promoted to the same posts as a result of the annulled promotion or had actually (as a result of the same promotions) exercised the duties and powers of the rank to which the temporary promotions will be made.")

From a study of the material before me there clearly emerge the following:

(a) That the sub judge promotions were not made for "a foreseeable short duration" but for an indefinite period.

(b) That by means of the sub judge decision there were promoted to the rank of acting Sergeant the persons ("Interested Parties"), whose promotion had been annulled by means of the above decision of the Supreme Court. 5

(c) That, contrary to the above advice of the Attorney-General, there has not taken place any consideration of the merits of all the candidates or a new evaluation of the candidates. 10

Under the said Regulation 10, a member of the Force who is required to perform the duties of a higher rank can be promoted to this post temporarily by the Chief of Police.

One of the grounds of law in support of the recourse was that in taking the sub judge decision, the respondents violated the legal rule applicable in such cases, i.e. the criteria of selection applicable to all Public Law promotions, namely seniority, qualifications and merit. 15

In *Parpas and Others v. The Republic* (1986) 3 C.L.R. 508, Pikis, J., had to deal with exactly the same situation for in the *Parpas case* the interested parties whose promotions to the rank of Chief Inspector were annulled by the Supreme Court were again promoted to the above post on a temporary basis. Also in making the sub judge promotions the Chief of Police purported to act on the basis of the above advice of the Attorney-General of the Republic. 20 25

The grounds on which the applicants in the *Parpas case* challenged the sub judge temporary promotions appear mainly at p.514 of the report and read as follows: 30

5 "The above promotions were made contrary to the letter and spirit of the advice of the Deputy Attorney-General. Mr. Loucaides recommended, in the first place, that temporary appointments should, if possible, be avoided. Neither the Chief of the Police nor the Minister seems to have given any consideration to this advice. Worse still, they proceeded to make temporary promotions contrary to the advice rendered by Mr. Loucaides. While he advised that temporary promotions should be made after a process of selection following an inquiry into the merits of the officers eligible for promotion, the sub judge promotions were made without holding a fresh inquiry and without consideration of the merits and suitability of anyone other than those promoted."

15 Pikiş, J., in annulling the sub judge temporary promotions on a number of grounds stated the following at pp. 516-517:

20 "Further, the advice of Mr. Loucaides that the promotions, even if temporary ought to have been made after due evaluation of the suitability of those members of the force eligible for promotion, is well founded in law. As it emerges from the decision of the Full Bench of the Supreme Court in *Republic v. Mylonas* (1985) 3 C.L.R. 1608, it is inherent in the concept of 'temporary appointment' or 'promotion'. As the Supreme Court observed, any attempt to make temporary promotions on any other basis, 'it savours either of a secondment or an unorthodox disguised filling of the vacancy'. The ratio of the above decision is that it is an abuse of power to make appointments or promotions under the guise of temporariness, as indeed appears to be the case with the promotions here under consideration. Nine months after the temporary promotions were made, no one knows or can predict with any degree of certainty when the organic posts will be permanently filled. Mr. Florentzos informed us this may become possible when new regulations are approved and enacted. When this will become possible, no one knows. The inescapable inference is that the Chief of Police, as well as the Minister of Interior, effected the temporary promotions without proper regard to the power vested in them.

The temporary promotions were not made for any fixed term or for any foreseeable period; they were made for an indefinite future period of time. This is yet another ground for annulling the decision."

Adopting as I do the reasoning of Pikis, J., in the *Parpas case*, 5
(supra) I declare the sub judice promotions null and void because:

(a) They have not been made after due evaluation of the suitability of those members of the force eligible for promotion.

(b) They were made in abuse of power in that they were permanent promotions under the guise of temporariness. 10

(c) They were not made for any fixed term or for any foreseeable period, but for an indefinite period of time.

In view of the above conclusion I need not deal with the remaining grounds of law.

In the result the sub judice promotions are annulled, but in the 15
circumstances there will be no order as to costs.

*Sub judice decision annulled.
No order as to costs.*