

1988 August 29

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DEMETRIS PETRAKIS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE EDUCATIONAL SERVICE COMMISSION,

Respondent.

(Case No. 764/85).

Educational Officers—Promotions—Retrospective promotion following annulment of promotions—Followed by a further retrospective promotion following annulment of other older promotions—Emoluments offered together with the offer for the second retrospective promotion less than those received actually by applicant at the time of such offer—Whether this is legally possible—Question determined in the negative. 5

Educational Officers—Promotions—Retrospective promotion to post already held by applicant—The decision is of a twofold nature, the one affirming the officer in his position and the other giving retrospective effect to it—Successful challenge of such decision—Effect—Kapsos v. The Republic (1988) 3 C.L.R. 1063 adopted. 10

Public Officers—Promotions—Meaning of "promotion"—The Public Service Law, 1967 (Law 33/67), section 28.

Words and Phrases—"Promotion" in section 28 of the Public Service Law, 1967 (Law 33/67). 15

The principles emanating from this decision are sufficiently summarised in the headnote.

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

Cases referred to:

Kapsos v. The Republic (1988) 3 C.L.R. 1063.

Recourse.

5 Recourse for a declaration that the act and/or decision of the respondent concerning applicant's salary and/or decrease of his salary is null and void and of no effect whatsoever.

M. Christofides, for the applicant.

D. Papadopoulou (Mrs.), for the respondent.

Cur. adv. vult.

10 SAVVIDES J. read the following judgment. What is being challenged by the present recourse is the decision of the respondent concerning the salary scale to which the applicant was em-
placed after his promotion to the post of Assistant Headmaster
with retrospective effect as from 1st January, 1981, which was
15 communicated to the applicant by letter dated 22nd June, 1985.

The facts of the case are briefly as follows:

The applicant, a school teacher in the elementary education, filed in 1981 recourse No. 124/81 challenging certain promotions to the post of Assistant Headmasters and in 1982 recourse No.
20 395/82 challenging other similar promotions.

Applicant was successful in recourse No. 395/82 in which judgment was delivered on 27th November, 1984 and as a result he was promoted to the post of Assistant Headmaster retrospectively as from 1st September, 1982, and his salary according to
25 respondent's letter dated 29th December, 1984 communicating to him his promotion was adjusted as follows:

"Your salary will be £3,580 per annum as from 21/12/84

and £3,637 as from 1/6/1985 on salary scale A9 £ 2821x136 - 3909 extended by two increments. Your incremental date will be the 1st of June...".

Following his promotion the applicant was paid his salary on the basis of the above scale. 5

On 10th May, 1985, the judgment of the Court in recourse No. 124/81 was delivered in which applicant succeeded in having the promotions challenged by him in 1981 annulled. As a result the respondent promoted the applicant to the post of Assistant Headmaster, a post which he was already holding by virtue of his previous retrospective promotion since 1st September, 1982, retrospectively since 1st January, 1981. Such promotion was communicated to him by letter dated 22nd June, 1985, embodying also his emplacement on the salary scale which according to paragraph 2 of such letter was as follows: 10 15

"Your salary will be £ 3,365 per annum as from 21/12/84, £3,501 as from 1.3.85 and £3,637 as from 1.3.86 on salary scale A9 £2,821x136 - 3,909 extended by two increments. Your incremental date will be the 1st of March..."

The applicant by letter dated 26th August, 1985, accepted the offer subject to certain reservations as follows: 20

"I refer to your letter and written offer for promotion dated 22.6.1985 and wish to inform you that I accept your offer so that my promotion to the post of Assistant Headmaster will be effective as from 1st January, 1981, but I reserve all my legal rights with respect to my salary fixed by your offer and I shall pursue the legal protection of my rights because I verily believe that it is not right, logically and legally, that the salary of an educationalist is reduced with his promotion." 25

In furtherance of his above letter to which the applicant received no reply, he filed on 4th September, 1985 the present recourse praying for a declaration that the act and or decision of the 30

respondent dated 22nd June, 1985, in so far as his salary is concerned and/or the decrease of his salary, be declared null and void and of no legal effect whatsoever.

5 Counsel for applicant in arguing his case contended that the retrospective promotion of the applicant as from 1st January, 1981 to the post of Assistant Headmaster which the applicant already held by virtue of a promotion to such post with effect as from 1st September, 1982 could not in any way affect his vested right to the salary he was being paid and result to a decrease of
10 same.

Counsel for the respondent contended that the salary scale on which the applicant was emplaced was the proper one and was in accordance with the regulations governing promotions. The calculation of his salary at his promotion to the post of Assistant
15 Headmaster as from 1st January, 1981, was, as counsel submitted, calculated according to the regulations on the basis of the salary he was receiving prior to 1st January, 1981. The applicant who was on salary scale A7 was given the salary he was receiving, £2,730 plus £70 part of his increment on such scale till 1st
20 January, 1981, plus the increment of scale A9 making a total of £2,936 to which the increments to which he was entitled were added thus making a total of £3,365 up to 1st March, 1985, and £3,501 upto 1st March, 1986 and £3,637 as from the 1st March, 1986 which is the salary offered to the applicant.

25 It is common ground in the present case that upon promotion with retrospective effect of the applicant to the post of Assistant Headmaster as from 1st January, 1981, the salary he was receiving at the material time when such promotion was communicated to him was higher than what was offered to him as a result of his
30 promotion.

It is apparent from the above that the promotion of the applicant instead of bringing any financial benefits to him operated to his financial detriment in that his emoluments were reduced instead of being increased.

The term promotion under s. 28 of the Public Service Law 1967 (Law 33/67) is given as follows:

" 'προαγωγή' σημαίνει αλλαγήν εις την μόνιμον κατάστασιν υπαλλήλου ήτις συνεπάγεται αύξησιν εις την αμοιβήν του υπαλλήλου ή συνεπάγεται την ένταξιν αυτού εις ανώτερον βαθμόν της δημοσίας υπηρεσίας ή επί μισθοδοτικής κλίμακος εχούσης υψηλότερον ανώτατον όριον, είτε η αμοιβή του υπαλλήλου αυξάνεται αμέσως διά της τοιαύτης αλλαγής είτε μη, ο δε όρος 'προάγειν' ερμηνεύεται αναλόγως."

And the translation in English:

" 'promotion' means any change in an officer's substantive status which carries with it an increase in the officer's remuneration or which carries with it the emplacement of the officer in a higher division of the public service, or on salary scale with a higher maximum, whether the officer's remuneration at the time is immediately increased by such a change or not, and the expression 'to promote' shall be construed accordingly;"

It is clear from the above section that though a promotion may have the result of the increase of the emoluments of a civil servant or an evolution in a higher post with or without an actual increase in his salary nothing is contained in such provision providing for a reduction of his salary upon promotion.

Promotion of a civil servant to a higher post entails the payment to him of the salary of the post and his incremental date as contained in the written offer made to him on his appointment (s. 44 (5) of Law 33/67). Upon acceptance of such promotion the civil servant is entitled to the salary offered to him, which cannot be subsequently reduced individually in his case, unless upon conviction for a disciplinary punishment or interruption of his annual increment or postponement of increment or reduction from a higher to a lower point of the salary scale or reduction to a lower scale in accordance with s.79(1) (d) (e) (g) and (h) of Law 33/67.

5 In the case under consideration the applicant in June, 1985, when he was offered promotion to the post of Assistant Headmaster was already holding such post on a permanent basis, he was on scale A9 and was being paid a salary of £3,580 which as from 1st June, 1985 would rise to £3,637 by the addition of his annual increment.

10 The decision of the respondent to promote him to the post of Assistant Headmaster as from 1st January, 1981 can only be treated in the present case, in fact, not as a promotion to the post of Assistant Headmaster but as a promotion giving retrospective effect to the post he already held, as from 1st January, 1981, instead of 1st September, 1982. If we accept as correct the submission of counsel for respondent that the promotion of the applicant as Assistant Headmaster would for all intents and purposes be considered as effective as from 1st January, 1981, and as affecting all benefits acquired by the applicant as a result of his previous promotion as from 1st September, 1982, then assuming that the decision of the respondent of 19th June, 1985, was challenged and the decision annulled then such annulment would have the result of sweeping away his promotion of 1st September, 1982, which had never been challenged. In my view such process would have led to injustice and unreasonableness.

25 As I explained in *Kapsos v. The Republic* (1988) 3 C.L.R. 1063 when a civil servant is promoted to a post and subsequently by a new decision his promotion is made with retrospective effect such decision is of a two-fold nature. The one affirming his already executed promotion and the other giving retrospective effect to it. If such second promotion is challenged successfully the result would be the annulment of the retrospectiveness of the promotion and not of the promotion itself which in fact took place previously and was not challenged.

35 In the circumstances of the present case I have come to the conclusion that the retrospective promotion of the applicant as from 1st January, 1981, could not bring about a reduction to his salary or a change of his incremental date in respect of which he

had a vested right.

For all the above reasons this recourse succeeds and the part of the decision of the respondent concerning applicant's salary scale, by which his emoluments were reduced is hereby annulled.

In the circumstances I make no order for costs.

5

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