

1966

June 24

July 1

—
IORDANIS G
IORDANOU (No 2)
and
THE REPUBLIC
OF CYPRUS
THROUGH
THE PUBLIC
SERVICE
COMMISSION

[TRIANTAFYLIDIS, J]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

IORDANIS G IORDANOU (NO 2).

Applicant

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION.

Respondent

(Case No 151/66)

—————

Public Officers—Transfer—Recourse against transfer—Provisional Order—Application for a provisional order postponing transfer until final determination of the recourse—Principles laid down in Georgiades (No 1) and The Republic (1965) 3 C L R 392 applied—This is a case where the personal interest of applicant has to be subjected to the public interest—Provisional Order as applied for refused but transfer suspended for a short period of time short of the final determination of the recourse in order to avoid undue interference with the applicant's trade union activities

Practice—Provisional Orders suspending the effect of an administrative decision—Principles applicable—See under Public Officers above and under Administrative Law Provisional Order below

Administrative Law—Acts or decisions subject matter of a recourse under Article 146 of the Constitution—Interference by Court by means of a provisional order in part only—In the instant case interference in part only with decision to transfer applicant—Course justified in view of the special circumstances existing in this case—See also above and below

Provisional Order—Whereby the Court interfered with the administrative decision complained of in the recourse in part only—General principles—Special circumstances—Personal interest to yield before the public interest—See also under the three headings above

Public interest—Personal interest—Personal interest to be subjected to the public interest—See under the four headings above

Cases referred to :

Cleanthis Georghiades (No. 1) and The Republic, (1965)
3 C.L.R. 392, principles laid down as to the issue of
provisional orders *applied*.

Application.

Application for a provisional order directing that the transfer of Applicant from Nicosia to Omodhos be postponed until the hearing and final determination of a recourse against such transfer.

L. Clerides, for the Applicant.

M. Spanos, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following Decision was delivered by:-

TRIANTAFYLIDIS, J.: In this recourse Applicant, an Assistant Agricultural Officer, challenges the validity of his transfer from Nicosia to Omodhos as from the 1st July, 1966. Such transfer was communicated to him by letter of the Respondent dated 23rd May, 1966, which reached him on the 1st June, 1966 (see *exhibit 1*).

By an application dated the 17th June, 1966, and filed simultaneously with this recourse, Applicant applies for a provisional order directing that his transfer should be postponed until the hearing and final determination of this Case. He has sworn an affidavit in support of his application which is dated 17th June, 1966.

Applicant's application for a provisional order is based mainly:-

(a) on the contention that his transfer, as made, should be annulled because it is really a disciplinary transfer, which resulted in view of Applicant's activities as one of the officials of the Pancyprian Trade Union of Civil Servants, and also because of friction between Applicant and his superiors;

(b) on the contention that he is at present, in Nicosia, engaged in very important experiments or demonstrations with fertilizers, which will be left incomplete—and which cannot be completed by anyone else, because Applicant is the only qualified specialist in the particular field concerned

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—whereas a more junior officer could be posted in the rural area of Omodhos; and

(c) on the contention that his transfer will interfere seriously with Applicant's family life, especially as his wife is a schoolmistress teaching literature at a Nicosia secondary school, and she is suffering, also, from low blood pressure and is under constant medical attention.

The relevant principles governing an application for a provisional order, in proceedings such as the present recourse, have been set out in previous jurisprudence of this Court, and especially in *Cleanthis Georghiaides (No. 1) and the Republic* ((1965) 3 C.L.R. p. 392), and need not be repeated herein again.

I have carefully weighed whatever has been urged on behalf of Applicant, in support of his application for a provisional order, but I have not been convinced that, if the transfer of Applicant to Omodhos is not postponed until the final determination of this recourse, he will suffer irreparable damage which cannot be compensated for eventually, under the provisions of Article 146(6), in case Applicant succeeds, in the end, in this recourse. On the other hand it does appear that this is a case where if Applicant's transfer is postponed, as applied for, it will cause obstacles to the proper functioning of the Administration. I am of the view, on the material at present before me, that though no doubt the taking of effect of the transfer of Applicant will involve some inconvenience for him and his family—as any transfer invariably does, more or less—this is a Case where his personal interest has to be subjected to the general public interest.

Concerning, in particular, the allegation of Applicant that his transfer, if it takes place now, will seriously interfere with important work with which he is dealing at the Headquarters of his Department, in Nicosia, I take the view that this was primarily a matter for his superiors to consider, who are the persons responsible for the efficient functioning of the Department; once they have decided, apparently, to recommend his transfer, it is not really open to Applicant to seek a postponement of such transfer on the ground of any work he may be doing at present. This point may, however, be relevant to the issue of whether or not the transfer of Applicant, as recommended and decided upon, was properly made in the interests of the service; but we are not concerned

with such issue at present; its consideration will take place during the hearing of this recourse on the merits

It is correct that on the face of the recourse there do appear serious allegations, by which Applicant is challenging his transfer, but they do not amount, on the material before me at present, to such a case of flagrant illegality of the transfer in question, as would make it necessary for this Court to intervene and prevent it from taking effect, at this stage; they are matters to be gone into properly at the trial of this recourse

For the above reasons, I have reached the conclusion that a provisional order, as applied for, should not be made

I have, on the other hand, considered whether or not there does exist any ground for interfering, *in part only*, with the effect of the transfer in question, i.e. whether or not there does exist any ground for postponing to a future date, short of the final determination of this recourse, the effect of the transfer of Applicant

Such a course should only be resorted to, of course, in special circumstances, in my opinion, such special circumstances do exist in the present Case because of the allegation of Applicant—made first in his Application and then on oath in his relevant affidavit—to the effect that his transfer is due, partly at least, to his activities as an official of his trade union. I am not at present deciding whether or not such allegation is correct. But bearing in mind that trade unionism is expressly safeguarded under Article 21 of the Constitution, and wishing to avoid any possibility of Applicant's transfer being allowed to interrupt abruptly his trade union activities, if it was ever calculated to do so, I have decided to suspend the effect of his transfer for a short period of time so as to definitely enable him to make such arrangements with regard to his trade union activities as are necessitated by, and compatible with, his posting at Omodhos. I am, thus, hereby making a provisional order preventing the transfer of Applicant from taking effect before the 15th July, 1966.

Bearing in mind that the Omodhos post has been, in any case, empty for at least the last seven months, and is being attended to by the officer at near-by Pera Pedhi, I am certain that any inconvenience to be caused for the next two weeks in the functioning of the Department of Agriculture, through

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the postponement of the taking of effect of the transfer of Applicant, is outweighed by the public interest to be served by ensuring that arrangements may be made to avoid any interference with any trade union work which Applicant may have in hand.

I am also directing that there shall be an early date of trial of this Case and I fix it for hearing on the 31st August, 1966, at 10 a.m.

Order in terms.