

[TRIANTAFYLLOIDES, J]
IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

IOANNIS CONSTANTINOU,
Applicant
and

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL FOR THE REINSTATEMENT OF
DISMISSED CIVIL SERVANTS,

Respondent

(Case No 28/66)

1966
April 13, 21
Nov 12
—
IOANNIS
CONSTANTINOU
and
THE REPUBLIC
OF CYPRUS
THROUGH
THE COUNCIL
FOR THE
REINSTATEMENT
OF DISMISSED
CIVIL SERVANTS

Public Officers—Reinstatement—Claim for reinstatement under the Dismissed Public Officers Reinstatement Law 1961 (Law No 48 of 1961)—“Entitled Officers”—Definition in section 2(c) of the said law—Public Officers who ‘retired compulsorily (and exclusively for political reasons)—Meaning of the said phrase in paragraph (c) of section 2 (supra)—The notion of compulsory retirement as used in the phrase “retired compulsorily” in paragraph (c) of the relevant definition of ‘entitled officer’ (supra) was not intended to be understood only in the narrow technical sense of the Pensions Law Cap 311 section 8 (i.e. only when an officer is required to retire)—But was intended to include cases where an officer has been compelled by political reasons to seek permission to retire without being formally required to do so—Refusal of applicant’s application to the respondent council for his reinstatement in the Cyprus Police Force—On the ground that applicant’s retirement in 1955 was a voluntary one and that therefore he was not an ‘entitled officer’ within the meaning of the aforesaid law (supra)—Decision of the respondent annulled as having been taken contrary to law viz. contrary to basic principles of Administrative Law and in abuse and in excess of powers through a defective exercise of respondent’s relevant discretion due to a basic misconception of fact

Administrative Law—Discretion—Decision annulled on a recourse under Article 146 of the Constitution—As having been taken contrary to law viz. the basic principles of Administrative Law—And in abuse and in excess of powers through a defective exercise of respondent’s discretionary powers due to a basic misconception of fact—See also under Public Officers above

1966
April 13 21.
Nov 12
—
IOANNIS
CONSTANTINO
and
THE REPUBLIC
OF CYPRUS
THROUGH
THE COUNCIL
FOR THE
REINSTATEMENT
OF DISMISSED
CIVIL SERVANTS

Administrative Law—Decision—May be annulled as being defective due to lack of proper inquiry on the part of the administrative authority concerned

Abuse of powers—See above

Basic Principles of Administrative Law—See above

Decision—Administrative decision taken contrary to law viz in this instance contrary to basic principles of Administrative Law—And in abuse and excess of powers—See above

Decision—Defective due to lack of proper inquiry on the part of the administrative authority concerned—See above under Administrative Law

Discretion—Discretionary powers—Defective exercise of—See above

Inquiry—Proper inquiry should be had—Defective decision through lack of proper inquiry—See above

Misconception of fact—Basic misconception of fact—Defective exercise of discretionary powers due to a basic misconception of fact—See above

Entitled Officers —Reinstatement of—See above

Reinstatement of dismissed public officers under Law 48 of 1961 supra—See above

Observations by the Court to the effect that it would be advisable where an officer's personal file is not such as to put the essential nature of the matter beyond doubt and where an applicant for reinstatement tenders witnesses who can give to the respondents the full facts that they should proceed to examine such witnesses in order to make the inquiry as full as possible

Applicant was a member of the Cyprus Police Force since 1926 and in August 1955 he applied for permission to retire having reached the age of fifty years. He put forward as the reasons for his wish to leave the Police 'excessive fatigue' due to hardships during his long service. Eventually the applicant was permitted to retire from the service under section 8(1) of the Pensions Law then Cap 288, now Cap 311, with effect as from the 1st January, 1956. He received all retirement benefits that were normally due to him. In due course the applicant applied to the respondent Council for reinstatement under the Dismissed Public Officers Reinstatement Law 1961. His application was refused.

It was the applicant's case that he was forced to apply in 1955 for permission to retire—and that, therefore, he “retired compulsorily” within section 2(c) of the Law (*supra*) because at the material time he was rendering assistance to EOKA (the National Organization of Cypriot Fighters which was waging the Liberation Struggle) and for this reason he came under suspicion on the part of his British superiors and he was running the risk of being dismissed from service, losing, thus, also his pension; so, acting on the advice of one of his Greek superiors, he decided to retire from service and applied accordingly.

The respondents did not accept that applicant's retirement took place in the context, and because, of his EOKA activities, but treated it as a purely voluntary retirement for private reasons and refused applicant's aforesaid application for reinstatement.

In annulling the said refusal the Court:

Held, (1). On the material before me, I am satisfied that the applicant decided to retire because of the very difficult situation in which he found himself due to his connection with the Liberation Struggle, and that this was not a case of normal retirement.

(2) In the circumstances, I am of the opinion that the respondents, in dismissing applicant's claim for reinstatement, were labouring under a basic misconception of fact; they decided the applicant's claim out of, and contrary to, its correct context and divorced from its true background.

(3) As a result this Court has no alternative but to annul the *sub judice* decision, as having been taken contrary to law *viz.* the basic principles of Administrative Law (See *Morsis'* case and *PEO'S* case (*infra*) and in abuse and excess of powers, through a defective exercise of respondents' relevant discretion.

Per curiam: In view of respondents' failure to call before them the witnesses suggested by the applicant, I would have considered annulling the sub-judice decision of respondents, as being defective due to lack of proper inquiry on the part of respondents. I need not, however go as far, once I have already annulled the said decision

1966
April 13, 21,
Nov 12
—
IOANNIS
CONSTANTINOU
and
THE REPUBLIC
OF CYPRUS
THROUGH
THE COUNCIL
FOR THE
REINSTATEMENT
OF DISMISSED
CIVIL SERVANTS

1966
April 13, 21,
Nov 12

—
IOANNIS
CONSTANTINO
and
THE REPUBLIC
OF CYPRUS
THROUGH
THE COUNCIL
FOR THE
REINSTATEMENT
OF DISMISSED
CIVIL SERVANTS

on the ground of misconception of fact as explained earlier (*supra*)

Per curiam I would like to observe that it would be advisable, where an officer's personal file is not such as to put the essential nature of the matter beyond doubt, and where an applicant for reinstatement tenders witnesses who can give to the respondents the full facts, that respondents should proceed to examine such witnesses in order to make their inquiry as full as possible, it is, of course, a matter for the respondents to regulate their own proceedings, in each specific case, as they may deem best

Cases referred to

Morsis and the Republic (1965) 3 C L R 1 followed,

PEO and Board of Films Censors and another (1965) 3 C L R 27 followed

Recourse.

Recourse against the decision of the Respondent to the effect that Applicant is not an entitled officer under the provisions of the Dismissed Public Officers Reinstatement Law 1961 (Law 48/61)

L Cleides for the Applicant

M Spanos Counsel of the Republic, for the Respondent

Cui adv. vult.

The following Judgment was delivered by -

TRIANAFYLIDIS, J In this recourse the Applicant challenges the validity of a decision of the Respondent, as communicated to him by a letter dated 28th January, 1966 (*exhibit 1*) By such decision Applicant's application for reinstatement, as an entitled officer, under the provisions of the Dismissed Public Officers Reinstatement Law 1961 (Law 48/61) was refused by the Respondent

Applicant was a member of the Cyprus Police since 1926, and in August, 1955, he was a police constable stationed at Ypsonas On the 20th August, 1955, he tendered his "resignation" from the Police "according to the Pensions

Law" (see *exhibits 3 and 3a*); in effect he applied for permission to retire having reached the age of fifty years. He put forward as the reason for his wish to leave the Police "excessive fatigue" due to hardships during his long service, as a result of which he was unable to continue performing his duties without difficulty.

A superior officer of Applicant, in forwarding his resignation, had this to say, *inter alia*:- "He is a good policeman but the present situation has apparently broken his nerves". It is common ground that he was referring to the situation which had arisen as a result of the Liberation Struggle, in Cyprus, which had commenced on the 1st April, 1955.

Eventually the Applicant was permitted to retire from the service under "section 8(1) of the Pensions Law Cap. 288" —now section 8(1) of Cap. 311 (see *exhibit 9*).

Applicant's retirement took effect on the 1st January, 1956. He received all retirement benefits that were normally due to him.

On the 7th December, 1961, he applied to Respondent for reinstatement under Law 48/61 (see *exhibit 6*). His application having been turned down, he filed recourse 223/62, which was withdrawn on Respondent undertaking to re-examine the matter. Applicant, through his advocate, placed before Respondent further material regarding his nationalistic activities at the material time (see *exhibit 2*). In the end Respondent turned down Applicant's application once again and as a result the aforesaid letter dated 28th January, 1966, (*exhibit 1*) was addressed to Applicant.

This recourse was filed on the 10th February, 1966.

Respondent in turning down Applicant's application for reinstatement regarded the retirement of the Applicant in 1955 as a voluntary one and reached thus the conclusion that Applicant was not, in the circumstances, an "entitled officer", in the sense of Law 48/61.

An "entitled officer" is defined in section 2 of Law 48/61 and the Applicant contends that he comes within the definition of an "entitled officer" in view of paragraph (c) of such definition which reads:- "ἀφουηρέτησεν ἀναγκαστικῶς" ("retired compulsorily").

1966
April 13, 21,
Nov. 12
—
IOANNIS
CONSTANTINOU
and
THE REPUBLIC
OF CYPRUS
THROUGH
THE COUNCIL
FOR THE
REINSTATEMENT
OF DISMISSED
CIVIL SERVANTS

1966
April 13, 21,
Nov. 12

IOANNIS
CONSTANTINOU
and
THE REPUBLIC
OF CYPRUS
THROUGH
THE COUNCIL
FOR THE
REINSTATEMENT
OF DISMISSED
CIVIL SERVANTS

It is the case of Applicant that he was forced to apply for permission to retire—and that, therefore, he “retired compulsorily”—because at the material time he was rendering assistance to EOKA (the National Organization of Cypriot Fighters which was waging the Liberation Struggle) and for this reason he came under suspicion on the part of his British superiors and he was running the risk of being dismissed from service, losing also his pension; so, acting on the advice of one of his Greek superiors, Mr. Costas Efstathiou, who was a Chief Inspector at the time stationed in Limassol, he decided to retire from service and he applied accordingly.

It is clear from the relevant minutes of Respondent, relating to the claim of the Applicant (*exhibit 7*), that the basic allegations put forward as constituting the case of the Applicant, were before the Respondent and within its contemplation when it came to deal with the matter.

As it appears, however, from the abovementioned minutes (see para. 2(1) of *exhibit 7*) and also from the letter addressed to Applicant on the 28th January, 1966, (see para. 3 of *exhibit 1*) the Respondent did not accept that Applicant's retirement took place in the context, and because, of his EOKA activities, but treated it as a purely voluntary retirement for private reasons.

This view of the Respondent is reflected, also, in the evidence of Mr. Eftyhios Yiannakis, a member of the Respondent.

I am of the opinion that such view is erroneous.

On the material before me I am satisfied that the Applicant decided to retire because of the very difficult situation in which he found himself due to his connection with the Liberation Struggle, and that this was not a case of normal retirement. In the circumstances, I am of the opinion that the Respondent, in dismissing Applicant's claim for reinstatement, was labouring under a basic misconception of fact: it decided the claim of Applicant out of, and contrary to, its correct context and divorced from its true background. As a result this Court has no alternative but to annul the *sub judice* decision of Respondent, as having been taken contrary to law *viz.* the basic principles of Administrative Law (see *Morsis and The Republic*, (1965) 3 C.L.R. p. 1 and *PEO and Board of Films Censors and another* (1965) 3 C.L.R. p. 27) and in abuse and in excess of powers, through a defective exercise of Respondent's relevant discretion.

By deciding this recourse in this manner I am not to be taken as deciding, also, whether the circumstances of Applicant's retirement entitle him to be treated as an "entitled officer", i.e. whether they are such as to amount to a compulsory retirement in the sense of the relevant definition in section 2 of Law 48/61. The application of the legislation in question to the facts of each particular case is a matter, in the first instance, for the Respondent, and this Court will not proceed to do so in this Case, at this stage. It is for the Respondent to reconsider the matter, in its proper context, and decide whether or not, in the circumstances, the Applicant is an "entitled officer" and also whether or not the Applicant retired exclusively for "political reasons", in the sense of Law 48/61; I am leaving these issues entirely open.

I must, however, make it clear that, in taking the view in this Judgment that the Applicant is entitled to succeed in this recourse, I am of the opinion that the notion of compulsory retirement, as used in paragraph (c) of the relevant definition, was not intended to be understood only in the narrow technical sense of section 8 of Cap. 311, (i.e. only when an officer is *required* to retire) but was intended to include cases where an officer has been compelled by political reasons to seek permission to retire, without being formally required to do so. Whether or not, in each such case, there exists the element of compulsion, to the extent necessary to render the officer concerned an "entitled officer", is a matter for the Respondent, in the first instance, which has, in the exercise of its discretion, quite a wide margin of appreciation. Had I found otherwise viz. that the compulsory retirement envisaged by the definition of "entitled officer" is to be understood only in the sense of the compulsory retirement provided for in section 8 of Cap. 311, then I would have had to dismiss this recourse, because Applicant having not been compulsorily retired in the sense of the said section 8, he could, under no circumstances, be held to be an "entitled officer", and, thus, he would not have been legitimated, in the sense of Article 146, to file this recourse.

Lastly, I would like to observe, that it would be advisable, where an officer's personal file is not such as to put the essential nature of the matter beyond doubt, and where an applicant for reinstatement tenders witnesses who can give to the Respondent the full facts, that Respondent should proceed

1966
April 13, 21.
Nov. 12
--
IOANNIS
CONSTANTINOU
and
THE REPUBLIC
OF CYPRUS
THROUGH
THE COUNCIL
FOR THE
REINSTATEMENT
OF DISMISSED
CIVIL SERVANTS

1966
April 13, 21.
Nov. 12
—
IOANNIS
CONSTANTINOU
and
THE REPUBLIC
OF CYPRUS
THROUGH
THE COUNCIL
FOR THE
REINSTATEMENT
OF DISMISSED
CIVIL SERVANTS

to examine such witnesses in order to make its inquiry as full as possible; it is, of course, a matter for the Respondent to regulate its own proceedings, in each specific case, as it may deem best.

In this particular case, in view of the comment made, as aforesaid, when the resignation of the Applicant was forwarded (*exhibit 3a*), and bearing, also, in mind that Applicant did invite the Respondent's attention to the existence of certain material evidence (see *exhibit 2*), I think that it was not proper to regard the formal documents in Applicant's personal files (*exhibits 10a and 10b*) as telling the whole story; in view of Respondent's failure to call before it the witnesses suggested by the Applicant—and particularly Mr. Efstathiou—I would have considered annulling the sub judice decision of Respondent, as being defective due to lack of proper inquiry on the part of Respondent; I need not, however, go as far, once I have already annulled such decision on the ground of misconception of fact, as explained earlier in this Judgment.

In the result this recourse succeeds and the sub judice decision is declared to be null and void and of no effect whatsoever. Regarding costs I have decided to award Applicant only part of his costs, viz. £12, in view of the fact, especially, that the hearing of this Case had to be adjourned once due to the fault of the Applicant.

*Sub judice decision annulled.
Order for costs as aforesaid.*