

1966
April 27,
June 3
Dec 17

[TRIANTAFYLIDIS, J]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

GEORGHIOS HJI LOUCA,

Applicant,

GEORGHIOS
HJI LOUCA
and
THE REPUBLIC
OF CYPRUS,
THROUGH
THE CHAIRMAN
OF THE
COUNCIL OF
REINSTATEMENT
OF DISMISSED
CIVIL SERVANTS

and

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

Respondent

(Case No 37/66)

Public Officers—Reinstatement—Claim for reinstatement in the Police Force under the Dismissed Public Officers Reinstatement Law 1961 (Law No 48 of 1961)—“Entitled Officer” —Within section 2 of the Law—“Compulsory retirement” as envisaged by paragraph (c) of the definition of “entitled officer” in section 2—Cannot be limited to cases in which the public officers concerned have been required to retire under section 8 of the Pensions Law Cap 311—But has to be taken as being intended to include cases where such officers have been compelled by ‘political reasons’, as defined in that section 2 to seek permission to retire—Without being formally required to do so—Principles laid down in Constantinou and The Republic reported in this Part at p 793 ante applied—Refusal by the respondents of applicant’s claim for reinstatement in the Cyprus Police Force under the aforesaid Law—On the ground that applicant’s retirement was a voluntary one—Said decision taken without due inquiry into the facts of the case—And, probably, under a misconception of fact—It has, therefore to be annulled—As it has been reached in a defective manner contrary to the accepted principles of administrative Law—And in abuse and excess of powers— See also under the headings which follow

Police Force —Reinstatement—See above

“Entitled Officer” Within the meaning of section 2 of Law No 48 of 1961 supra—See under Public Officers above, and under Compulsory Retirement below.

Compulsory Retirement—“Compulsory retirement” for “political

reasons" within the meaning of section 2 of the said Law No. 48 of 1961 (*supra*)—To render anyone an "entitled officer" under section 2 of the Law it would not be sufficient that the public officer concerned felt inwardly compelled by political reasons to retire—External pressures, created by "political reasons", in the sense in which "political reasons" are defined in section 2 aforesaid, must have led the public officer concerned to find himself compelled to retire—Before he can claim to come under paragraph (c) of the definition of "entitled officer", *supra*—And claim, accordingly, his reinstatement under the Law—See, also, under *Public Officers*, above.

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"Political Reasons"—Under section 2 of Law No. 48 of 1961, *supra*—See above under *Public Officers, Compulsory Retirement*.

Administrative Law—Discretionary powers—Decision—Decision reached by the administrative authority in a defective manner—Due to lack of proper inquiry into the relevant facts—Taken, also, as a result of a misconception of fact—The said decision has therefore to be annulled as it has been reached in a defective manner, contrary to accepted principles of Administrative Law—And in abuse and excess of powers—See, also, under Public Officers above, and under Inquiry herebelow.

Principles of Administrative Law—Accepted principles of Administrative Law—See above Public Officers, Administrative Law.

Inquiry—Duty of an administrative authority to make the reasonably necessary inquiry for the purpose of ascertaining the correct facts to which the relevant legislation is to be applied—See, also, under Public Officers, Administrative Law, above.

Abuse and excess of powers—See above under Public Officers, Administrative Law.

Decision—Discretion—Decision of an administrative authority reached in a defective manner or as a result of a misconception of fact—See above under Public Officers, administrative Law.

Misconception of fact—Decision reached under a misconception of fact—See above under Public Officers, Administrative Law.

Cases referred to:

Constantinou and The Republic, reported in this Part at p. 793 *ante*, followed;

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Dafnides and The Republic 1964 C L R 180

Photiades and The Republic, 1964 C L R 102 at pp 112, and
115, *applied*

The facts sufficiently appear in the judgment of the Court

Recourse.

Recourse against the decision of the Respondent Council by virtue of which he has been found not to be an "entitled officer" within the provisions of the Dismissed Public Officers Reinstatement Law 1961 (Law 48/61)

L. Clerides, for the Applicant.

L. Loucaides, Counsel of the Republic, for the Respondent

Cui adv vult.

The following Judgment was delivered by:-

TRIANAFYLIDIS J In this recourse, the Applicant complains against a decision of the Respondent Council, by virtue of which he has been found not to be an "entitled officer" within the provisions of the Dismissed Public Officers Reinstatement Law 1961 (Law 48/61) Such decision was communicated to Applicant by letter dated 28th January, 1966, (marked *exhibit 1*)

Applicant had applied for reinstatement as far back as December 1961 (see *exhibit 3*) He was informed, by letter of the 18th July, 1962, that his application had been rejected and he filed recourse 224/62 against such decision Eventually, on the 10th April, 1965, that recourse was withdrawn, on Respondent undertaking to re-examine the case afresh, in the light of all relevant material

As a result Applicant placed before Respondent a detailed statement of the facts on which he was relying in support of his claim for reinstatement, he furnished Respondent also with a list of witnesses- including the present Commander of Police Mr Hassabis—together with a short summary of the information which such witnesses could supply to the Respondent, (see *exhibit 2* and Reds 13-16 in *exhibit 3*)

The Respondent reconsidered the case of Applicant and its reasoned decision is to be found in its relevant file, *exhibit 3*, it is dated the 27th January, 1966 As already stated,

Respondent decided, once again, to reject the application of Applicant for reinstatement.

Prior to doing so, the Respondent called Applicant to appear before it on the 16th December, 1965, and asked him whether he had anything to add in support of his application; Applicant, as it appears from the relevant record, repeated allegations which he had already placed before the Respondent in writing.

In view of the rejection of his application for reinstatement the Applicant filed his present recourse on the 18th February, 1966.

It is useful to dwell, at this stage, upon some basic facts of the matter:—

The Applicant enlisted in the police in 1927; he was granted permission to retire therefrom as from the 1st February, 1956. On his retirement, he received a reduced pension and a gratuity, in accordance with his rights under the relevant legislation.

The application of Applicant to be granted permission to retire, which was made under section 8 of the Pensions Law Cap. 311 (then Cap. 288), was based on the fact that he had attained the age of fifty and that his health and private affairs obliged him to adopt such a course; it was dated the 31st August, 1955, (see blue 69 in his personal file, *exhibit* 4).

Applicant's said application was dealt with by Mr. Hassabis, who was his superior at the time, as Superintendent of Police in Limassol, and who commented, *inter alia*, in a relevant minute, dated 5th September, 1955, (see, again, blue 69, *supra*), that he thought that the then prevailing "situation" had affected Applicant; there is no doubt that the "situation" to which Mr. Hassabis referred was the situation which had arisen as a result of the Liberation Struggle which was initiated on the 1st April, 1955, by EOKA, the National Organization of Cypriot Fighters.

It is noteworthy that at the back of Applicant's application for permission to retire, the then Assistant Commissioner of Police, Mr. Carter, noted, *inter alia*, the following, on the 7th September, 1955:— "A most valuable member of the C.I.D. and I should be sorry to lose him. I think

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Hassabis is right when he says that this man is a victim of the war of nerves”

The case of Applicant for reinstatement, as placed before Respondent, was that the true reason for which he had decided to seek permission to retire was that he had found himself under pressure—including pressure to retire—on the part of his superiors, because, as a member of the Criminal Investigation Division, he refused to take an active part in the effort of the British Authorities against EOKA, and on the contrary he was rendering such assistance to members of EOKA as he could in the circumstances

The Respondent found, however, by its decision, (see, particularly, paragraph 2 thereof) that the official records were such that it could not be reasonably found that the allegations of the Applicant were well-founded. The official records which were relied upon by Respondent were mainly the aforesaid application of Applicant for permission to retire (blue 69 in *exhibit* 4) and the subsequent action taken thereon by the British Authorities, at the time

This Court has had occasion recently to deal with a very similar case, that of *Constantinou and The Republic* (Case 28/66, decided on the 12th November, 1966, not reported yet) * In the Judgment in that case, the view was taken by the Court that the compulsory retirement envisaged by paragraph (c) of the definition of “entitled officer” in section 2 of Law 48/61, cannot be limited to cases in which the public officers concerned have been required to retire under section 8 of Cap. 311, but has to be taken as being intended to include cases where such officers were compelled by political reasons to seek permission to retire, without being formally required to do so, it was pointed out in the said Judgment that whether or not there exists, in any particular case, 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

It might, of course, be added that I do not think it would be sufficient, in order to render anyone an “entitled officer” in the sense of section 2 of Law 48/61, to allege that he felt *inwardly compelled* by political reasons to retire, *external*

*Note: Now reported in this Part at p 793, *ante*.

pressures, created by political reasons—in the sense in which “political reasons” are defined in section 2 of Law 48/61—must have led the person concerned to find himself compelled to retire, before he can claim to come under paragraph (c) of the definition of “entitled officer”.

In the first case of its kind to come before this Court, *Dafnides and The Republic* (1964 C.L.R. 180), counsel appearing then for the Respondent in the present Case did concede that where psychological pressure, due to political reasons, has led to the decision of the officer concerned to retire, the officer concerned may be deemed to have been compulsorily retired.

In the present Case, as in the case of *Constantinou and The Republic* (*supra*), it is clear, from the reasoning of the decision of the Respondent, that the Respondent treated the retirement of the Applicant as a truly voluntary one, having rejected the allegations of the Applicant to the contrary.

Counsel for Respondent has argued, at the hearing, that the Respondent did treat as correct all the allegations of the Applicant but, nevertheless, it could not find him to be an “entitled officer”. I find myself unable to agree that this is so, in view of the fact that Respondent has stated in unequivocal terms, both in the relevant decision (see *exhibit* 2) and in the letter of the 28th January, 1966 (*exhibit* 1), that it considered Applicant’s version as not well-founded.

The situation which has, thus, resulted is that the Respondent, in view of the official records, refused to give any credence to the allegations of the Applicant, without investigating further; because, it is common ground that none of the persons named by the Applicant was ever called upon by the Respondent to tell what he knew of the matter.

Had this been a case where the official records constituted all the material which the Respondent should properly have taken into account, or had the Respondent investigated fully the relevant allegations of the Applicant and had it then reached its sub judice decision, this Court would not have substituted its own evaluation of the facts in the place of the Respondent’s evaluation of the facts, so long as such evaluation was reasonably open to the Respondent.

But I have reached the conclusion that in this Case the matter is not as simple as that: In my opinion it was not

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proper for the Respondent, in a case of this nature, to limit itself to official records, setting out certain reasons for the retirement of the Applicant, in relation to a time at which it might not have been possible for the true reasons therefor to be recorded. Here was the Applicant, an ex-policeman, applying to Respondent, claiming that his retirement was the result of psychological pressure amounting to compulsion, which had resulted from the situation he had found himself in, in the course of the struggle of EOKA—admittedly not as a member of EOKA, but as a sympathizer and supporter; he gave Respondent a list of persons, some of whom are still in authority, who could, allegedly, assist Respondent with their own knowledge of the true facts; yet Respondent did nothing more than to shut its eyes to the existence of material other than what was to be found in the personal file of the Applicant, and rejected out of hand his allegations as not well-founded, without even hearing what the said persons had to say.

This is, in my opinion, a classic case in which the administrative organ concerned has failed in its duty to carry out a full and proper inquiry for the ascertainment of all the correct relevant facts, on the basis of which it had a statutory duty to reach a decision by applying thereto the relevant legislation.

As repeatedly stated in earlier jurisprudence of this Court (see, *inter alia*, *Photiades and The Republic*, 1964 C.L.R. 102 at p. 112) an administrative authority has a duty to make the reasonably necessary inquiry for the purposes of ascertaining the correct facts to which the relevant legislation is to be applied. In the present Case I have no doubt at all that the reasonably necessary, in the circumstances, inquiry has not been carried out by Respondent. The duty of the Respondent in the present Case to carry out a further inquiry was made even more imperative by the fact that the very same official records, on which it relied, contain strong hints that the Applicant may have been compelled to retire by psychological pressures (see the minutes of Hassabis and Carter on blue 69 in *exhibit 4*).

In the circumstances, I am of the opinion that the *sub judice* decision of the Respondent has been reached in a defective manner, contrary to the accepted principles of Administrative Law, and in abuse and excess of powers, and has to be declared to be null and void and of no effect whatsoever.

Moreover, there has arisen in my mind, in the circumstances, a strong suspicion, to say the least, that the Respondent, by limiting itself to the official records, has been led to act under a misconception of fact; this is another reason why the sub judice decision has to be annulled, so that Respondent may examine afresh the matter (see *Photiades and The Republic supra*, at p. 115).

It is now up to Respondent to inquire afresh into the matter, to ascertain the exact circumstances in which the Applicant came to retire, and in the light thereof to decide whether he is an "entitled officer".

Regarding costs I have decided to award Applicant £10 against his costs, after taking into account, also, the order for costs made against Applicant on the 27th April, 1966.

Sub judice decision annulled.

Order as to costs as aforesaid.

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