

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

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KYRIAKOS
PIPERIS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

KYRIAKOS PIPERIS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 239/65).

Public Officers—Appointments, Promotions and Salaries—Applicant's recourse against salary offered to him by Respondent on promotion from the post of Driving Examiner to the post of Chief Driving Examiner, Police Department—Fixing by Law a new and lower salary for the Applicant's above post—The Appropriation (Amendment No. 2) Law, 1965 (No. 48 of 1965)—Respondent, acted in accordance with legislation in force, having no alternative or discretion to act otherwise—Not guilty of having acted, in any way, contrary to law or in excess or abuse of powers.

Public Officers—Safeguard of rights existing prior to Independence—Terms and conditions of service—Constitution of Cyprus. Article 192—Prospects of advancement of public officers not safeguarded by Article 192.

Constitutional and Administrative Law—Article 146.2 of the Constitution—Applicant not possessing a legitimate interest in the sense of Article 146.2 entitling him to challenge the salary offered to him by Respondent included in an offer of appointment made to him by Respondent and unreservedly accepted by him.

Legitimate interest—In the sense of Article 146.2 of the Constitution—See immediately above.

The Applicant in this recourse complains against the decision of the Public Service Commission to grant him a salary of only £900 per annum instead of a salary of £1,056 per annum on promoting him from the post of Driving Examiner to the post of Chief Driving Examiner.

At the time of his promotion Applicant was already receiving a salary of £900 per annum which was the salary scale applicable to the post of Driving Examiner but by the Appropriation (Amendment No. 2) Law 1965 (Law 48/65) the salary of his new post was reduced from the scale of £900x30-£1020x36-1056 to the scale of £720x30-900 *i.e.* the scale he was enjoying prior to his promotion. It is a common ground that Applicant accepted the promotion without any reservation regarding the salary offered to him.

Held, (1). In my view, once the Applicant has accepted the offer of appointment made to him on the 28th September, 1965, which included the salary now complained of—(and nothing was produced to show that he has accepted subject to a reservation regarding the salary offered to him)—he does not possess a legitimate interest in the sense of Article 146.2 of the Constitution entitling him to challenge the said salary by means of this recourse (see, also, Conclusions from the Jurisprudence of the Greek Council of State 1929-1959 p. 261); this recourse, therefore, fails on this ground, in the first place.

(2) Even if, however, Applicant were to be held to possess a legitimate interest entitling him to make this recourse, in spite of the acceptance of the promotion in question, I do fail to see how the Applicant can, validly, complain against the Respondent Commission about the salary offered to him on his promotion; such salary was not decided upon by the Commission at all; the Commission was, simply, implementing the provisions of legislation in force fixing the salary for the post concerned; it was not lawfully open to the Commission to offer to the Applicant any salary other than the one provided for by means of the legislation in question, Law 48/65 (see *Suleiman and The Republic*, 2 R.S.C.C. p. 93).

(3) Nor do I find any merit in the submission of the Applicant that Law 48/65, in fixing a new and lower salary for the post above his own, to which he was expecting to be, and was eventually, promoted contravenes Article 192 of the Constitution. Under such Article there were not safeguarded the prospects of advancement of public officers, but only the terms and conditions of service of the posts held by them substantially on the 16th August, 1960 (*Shener and The Republic*, 3 R.S.C.C. 138).

(4) In the circumstances, the Commission, having acted in accordance with legislation validly in force, and having had no

alternative or discretion to act otherwise, cannot be held guilty of having acted, in any way, contrary to law, or in excess or abuse of powers, in offering to the Applicant the salary scale complained of; as a result, this recourse fails and it is dismissed accordingly.

Application dismissed.
No order as to costs.

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Cases referred to:

Suleiman and The Republic, 2 R.S.C.C. 93.

Shener and The Republic, 3 R.S.C.C. 138.

Recourse.

Recourse against the decision of the Respondent to grant Applicant a salary of only £900.—instead of a salary of £1,056 per annum when appointing him to the post of Chief Driving Examiner from the post of Driving Examiner.

J. Mavronicolas, for the Applicant.

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

Cur. adv. vult.

The following Judgment was delivered by:

TRIANAFYLLIDES, J.: In this recourse the Applicant complains that the Respondent Public Service Commission, when appointing him to the post of Chief Driving Examiner in the Police Department, on promotion from the post of Driving Examiner, granted him a salary of only £900.—, instead of a salary of £1,056.— per annum.

On the 24th September, 1965, the Respondent Commission met to consider the filling of a vacancy in the post of Chief Driving Examiner and it decided to promote Applicant to such post as from the 1st October, 1965, (see *exhibit 2*).

As a result, on the 28th September, 1965, an appointment was offered to the Applicant for the said post (see *exhibit 1*) in which it was mentioned, *inter alia*, that the salary scale of the post was £720x30—£900 and that the Applicant would be receiving a salary of £900.— per annum, *i.e.* the maximum of the said scale.

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At the time the Applicant was receiving already a salary of £900. — per annum, on the basis of the salary scale applicable to the post of Driving Examiner prior to the coming into effect, on the 15th July, 1965, of the Appropriation (Amendment No. 2) Law, 1965, (Law 48/65); Applicant had been holding the post of Driving Examiner since 1956.

Until the coming into effect of Law 48/65 the salary scale for the post of Driving Examiner was £720x30—£900, and the salary scale for the post of Chief Driving Examiner was £900x30—£1,020x36—£1,056. Under Law 48/65, however, the salary scale for the post of Chief Driving Examiner was reduced to be the same as that which was previously applicable to the post of Driving Examiner (£720x30—£900) and the salary scale for the post of Driving Examiner was reduced to £570x24—£690x30—£720.

Thus, when the Applicant was promoted, as from the 1st October, 1965, to the post of Chief Driving Examiner, he found such post having the same salary scale as the one which applied previously to his own post, of Driving Examiner, from which he had been promoted; as a result, notwithstanding his promotion, and the increased responsibility which naturally followed such promotion, the Applicant did not enjoy any increase in salary through such promotion.

In this recourse the Applicant is not attacking his promotion, as such. Actually, it is common ground that he has accepted his said promotion. He is only complaining about the salary which he has been given in relation to the post to which he has been promoted.

By accepting his promotion, the Applicant has, in effect, accepted the offer of appointment made to him on the 28th September, 1965 (*exhibit 1*); and one of the terms of such offer was the salary about which he now complains.

In my view, once the Applicant has accepted the offer of appointment made to him on the 28th September, 1965, which included the salary now complained of — (and nothing was produced to show that he has accepted subject to a reservation regarding the salary offered to him) — he does not possess a legitimate interest in the sense of Article 146.2 of the Constitution entitling him to challenge the said salary by means of this recourse (see, also, Conclusions from the Jurisprudence of the Greek Council of State 1929—1959 p. 261); this recourse, therefore, fails on this ground, in the first place.

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Even if, however, Applicant were to be held to possess a legitimate interest entitling him to make this recourse, in spite of the acceptance of the promotion in question, I do fail to see how the Applicant can, validly, complain against the Respondent Commission about the salary offered to him on his promotion; such salary was not decided upon by the Commission at all; the Commission was, simply, implementing the provisions of legislation in force fixing the salary for the post concerned; it was not lawfully open to the Commission to offer to the Applicant any salary other than the one provided for by means of the legislation in question, Law 48/65 (see *Suleiman and The Republic*, 2 R.S.C.C., p. 93).

Nor do I find any merit in the submission of the Applicant that Law 48/65, in fixing a new and lower salary for the post above his own, to which he was expecting to be, and was eventually, promoted, contravenes Article 192 of the Constitution. Under such Article there were not safeguarded the prospects of advancement of public officers, but only the terms and conditions of service of the posts held by them substantively on the 16th August, 1960 (*Shener and The Republic*, 3 R.S.C.C., p. 138).

In the circumstances, the Commission, having acted in accordance with legislation validly in force, and having had no alternative or discretion to act otherwise, cannot be held guilty of having acted, in any way, contrary to law, or in excess or abuse of powers, in offering to the Applicant the salary scale complained of; as a result, this recourse fails and it is dismissed accordingly.

Regarding costs, I have decided, in the circumstances of this Case, to make no order as to costs.

This recourse has now been decided according to law; but I do appreciate that the Applicant may be feeling aggrieved in that he has been deprived of the better prospects which his promotion would have otherwise, and normally, entailed, and yet he has found no legal remedy in the matter; may be his remedy lies in the appropriate authorities of the Republic treating his case as a personal one, on its merits, and making specific provision in respect thereof.

*Application dismissed.
No order as to costs.*