

1968
Aug. 14

PETROS ANTONIOU
v.
REPUBLIC
(MINISTER OF
FINANCE AND
OTHERS)

[STAVRINIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

PETROS ANTONIOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF FINANCE AND OTHERS,

Respondents.

(Cases No. 65/66, 136/66).

(Consolidated).

Greek Communal Chamber—Abolition—Transfer—The Transfer of the Exercise of the Competences of the Greek Communal Chamber and the Ministry of Education Law, 1965 (Law No. 12 of 1965 of the 31st March, 1965)—Transfer to the public service of the Republic by operation of that Law as from March, 31, 1965 of every person—like Applicant—who immediately before that day was in the service of the Greek Communal Chamber as a member of the staff of its offices—And emplacement thereafter to the public service of the Republic on the same conditions of service and in a post whose functions are comparable to the functions of the post held in the service of the chamber—Section 16(1)(2) and (6) of the said Law—Non-placement of Applicant in any public post is “an omission” which ought not to have been made within the meaning of Article 146.1 of the Constitution—See, also, herebelow.

Constitutional Law—Budget—Law of Budget—Rights of the Applicant under section 16 of the Law not affected in the least by the fact that a provision in the Budget Law, 1966 for the payment of thirty-two Auditors of Co-operative Societies (one of whom was the Applicant) out of public funds was deleted by the Budget (Amendment) Law, 1966.

Budget—Law of Budget—See above.

Administrative and Constitutional Law—Recourse under Article 146 of the Constitution—“Omission” which ought not to have been made—Article 146.1—“Legitimate interest” under Article 146.2 of the Constitution—The acceptance by the Applicant

1968
Aug. 14

—
PETROS ANTONIOU
v.
REPUBLIC
(MINISTER OF
FINANCE AND
OTHERS)

of a temporary appointment which entails no status of a Government Official in the circumstances it was made was not voluntary and therefore is inoperative in no way taking away his "legitimate interest" to pursue his present recourses.

Words and Phrases—"Comparable post whose functions are comparable to the functions..." in section 16(1) of the Transfer of the Exercise of the Competences of the Greek Communal Chamber and the Ministry of Education Law, 1965 (Law No. 12 of 1965).

Public Service—Transfer to the public service of the Republic of persons in the service of the abolished, on the 31st March, 1965, Greek Communal Chamber under Law No. 12 of 1965 (supra).

Legitimate interest—Article 146.2 of the Constitution—See above under Administrative and Constitutional Law.

The Greek Communal Chamber was, in effect, abolished on March, 31, 1965, by the Transfer of the Exercise of the Competences of the Greek Communal Chamber and the Ministry of Education Law, 1965, (Law No. 12 of 1965). Section 16(1) (2) and (6), so far as relevant, provides as follows:

"(1) every person who immediately before the date of the coming into operation of this Law (*Note*: that is on March 30, 1965) was in the service of the (Greek Communal) Chamber as member of the staff of its offices shall be transferred, as from that date (*Note*: that is as from March, 31, 1965) to the service of the Republic and be thereafter placed by the *appropriate authority* of the Republic therein, as far as practicable in a post whose functions are *comparable* to the functions of the post held in the service of the chamber: Provided that every such person shall, until he is posted under this subsection, continue to hold the post he held immediately before the coming into operation of this Law:

(2) The service of every person under the Republic is on the same conditions of service as were applicable to him before that date:

Provided that.....

(3) For the purposes of this section 'conditions of service' includes.....the matters relating to salary, leave,

1968
Aug. 14

PETROS ANTONIOU
v.
REPUBLIC
(MINISTER OF
FINANCE AND
OTHERS)

dismissal, or retirement, and the benefits granted on retirement.”

It is common ground that “immediately before” that date, that is on March 30, 1965 the Applicant was “in the service of the Chamber as a member of the staff of its offices” within the meaning of section 16(1) (*supra*) and that the “appropriate authority of the Republic” within the meaning of that provision is the Public Service Commission; and there is no question but that the post he held was the permanent and pensionable post (to which he had been appointed on May 24, 1962) of “Auditor of Greek Co-operative Societies” in the Office of Co-operative Development of the Greek Communal Chamber. However, not only has he not been placed in any permanent and pensionable post in the service of the Republic but he has not been placed in any specific post in such service. It is against, *inter alia*, that omission on the part of the Public Service Commission to emplace him in any appropriate post in the public service of the Republic that the Applicant complains by his two recourses filed on April, 1966 and on June 4, 1966, respectively, in the events which are fully set out in the Judgment, *post*. It is to be noted that on June 25, 1966 after, the filing of his recourses, the Applicant was led to accept an appointment to the post of Auditor of Co-operative Societies in the Department of Co-operative Development. This appointment, which was on a temporary basis and did not even entail the status of a “Government Official” (see *post* in the Judgment), was accepted by the Applicant in circumstances which led the Court to hold that such acceptance “was not voluntary and therefore is inoperative”.

It was argued on behalf of the Respondents that the Applicant is not entitled to any relief on the following four grounds:

(1) Not having been a public officer before independence, the Applicant is not protected by the Constitution (Article 192.1); therefore the administration was entitled to alter his conditions of service and defeat his rights by abolition of posts.

(2) Although at the material date (*i.e.* 30th March, 1965) he was “in the service of the Chamber as a member of the staff of its offices” within section 16(1) of the Law (*supra*), the Applicant could not be posted in the public service because

there was no post the functions of which were comparable, since no special statutory provision was made.

(3) Having accepted on June 25, 1966 the aforesaid appointment as Auditor of Co-operative Societies (*supra*), the Applicant has no more a "legitimate interest" within Article 146.2 of the Constitution to pursue the recourses.

(4) His present post is comparable to that which he held before the 16th August, 1960, *i.e.* before the establishment of the Republic.

Held, as to argument (1) above:

In this connection counsel for the Republic referred me to the fact that a provision in the Budget Law, 1966 for the payment of thirty-two Auditors of Co-operative Societies out of public funds was deleted by the Budget (Amendment) Law, 1966. It seems that in his view the effect of the deletion is what he describes as "abolition of posts". It is true that when each of the said 1966 Budget Laws was enacted, the Applicant, under the proviso to section 16(1) of Law No. 12 of 1965 (*supra*) was still a holder of the post of Auditor of Co-operative Societies; but he nevertheless had a right to emplacement in some public post by the Public Service Commission. No doubt that right could be modified, or even taken away by legislation. But it is plain that the later 1966 Budget Law was not concerned with abolishing, or even modifying, any right conferred by the aforesaid Law No. 12 of 1965 (*supra*).

Held, as to argument (2) above:

Surely, there are posts in the Audit Department of the Government whose functions are comparable to those of Auditors of Co-operative Societies; and as for the absence of "special statutory provision" argued by counsel for the Respondents reference may be made to the case of *Boyiatis* and *The Republic*, 1964 C.L.R. 367, at p. 376.

Held, as to argument (3) above:

I do not agree that the acceptance by the Applicant of the said appointment did operate as to extinguish his "legitimate interest" within Article 146.2 of the Constitution. An acceptance which, like the one under consideration,

1968
Aug. 14

PETROS ANTONIOU
v.
REPUBLIC
(MINISTER OF
FINANCE AND
OTHERS)

entails unmitigated detriment, must obviously be viewed with caution; and viewing the matter in the light of all surrounding circumstances, I conclude that such acceptance was not voluntary and therefore is inoperative.

Held, as to argument (4) above:

(1) The comparability prescribed by section 16(1) of Law No. 12 of 1965 (*supra*) is one between the functions of the post to be allocated under it and those of the post "held in the service of the chamber", *not those* of any post held before independence. But what the Applicant is complaining of is not the functions of the post so allocated to him by his said appointment, but the fact that it is neither pensionable nor permanent.

(2) And in this respect the relevant provision is subsection (2) of section 16 of the said Law No. 12 of 1965, which says nothing about comparability, but expressly prescribes that "the service of every person under the Republic is on the same *conditions of service* as were applicable to him before that date"; and the last three words clearly refer, not to any time before independence, but to the statutory date of March 30, 1965 (*supra*) when the Applicant held a permanent and pensionable post in the service of the Greek Communal Chamber.

Held, in the result:

It follows from the foregoing that all the argument put against these recourses fail. I therefore declare, that the non-placement of the Applicant by the Public Service Commission in a public post is "an omission" within Article 146.1 of the Constitution; that such omission ought not to have been made; and that it is the duty of the Commission to place the Applicant in some permanent and pensionable post in the public service, being a post "the functions of which are comparable to those of the post of Auditor Co-operative Societies". The Republic to pay £20 costs.

Order, and order for costs, in terms.

Cases referred to:

Boyiatzis and The Republic, 1964 C.L.R. 367 at p. 376.

Recourse.

Recourse against the omission of the Respondent Public Service Commission to emplace Applicant in the appropriate post in the Public Service.

A. Triantafyllides, for the Applicant.

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

Cur. adv. vult.

The following Judgment was delivered by:—

STAVRINIDES, J.: When the island became independent the Applicant was a supervisor of Co-operative Societies in the Department of Co-operative Development of the Government of Cyprus. Holders of that office were paid out of a fund constituted under r. 92 of the Co-operative Societies Rules, whereby

“... every registered (co-operative) society shall, when called upon to do so by the Registrar, make annually a contribution to such Fund.”

On November 18, 1960, the former Greek Communal Chamber (hereafter “the Chamber”), by its first Law, entitled the Producers’ and Consumers’ Co-operatives and the Credit Establishments Law, 1960, published in the official Gazette of the Republic that day, set up an Office of Co-operative Development of its own; and on May 24, 1962, the Applicant, who meanwhile had continued performing the same duties as before, was appointed by it “to the permanent and pensionable post of Auditor of Greek Co-operative Societies” in that Office, with effect from October 1 of that year (*exhibit 1C(i)*). While working under the Chamber he was paid by that body, still performing the same duties. The Chamber was, in effect, abolished on March 31, 1965, by a Law enacted by the House of Representatives, entitled the Transfer of the Exercise of the Competences of the Greek Communal Chamber and the Ministry of Education Law, 1965, s. 16(1)(2) and (6) of which, so far as relevant, provides as follows:

(1) “... every person who immediately before the date of the coming into operation of this Law was in the service of the Chamber as a member of the staff of its

1968
Aug. 14

—
PETROS ANTONIOU
v.
REPUBLIC
(MINISTER OF
FINANCE AND
OTHERS)

offices shall be transferred, as from that date, to the service of the Republic and be thereafter placed by the appropriate authority of the Republic therein, as far as practicable in a post whose functions are comparable to the functions of the post held in the service of the Chamber:

Provided that every such person shall, until he is posted under this subsection, continue to hold the post which he held immediately before the coming into operation of this Law.

(2) The service of every person under the Republic is on the same conditions of service as were applicable to him before that date:

Provided that the salary of the post which such person held as shown in the last budget of the Chamber is regarded as personal salary of that person.

.....
(6) For the purposes of this section 'conditions of service' includes, subject to the necessary modifications in accordance with the structure created by this Law, the matters relating to salary, leave, dismissal, or retirement, and the benefits granted on retirement."

That Law was published in the official Gazette of the Republic on March 31, 1965, and came into operation at once.

It is common ground that "immediately before" that date, that is on March 30, 1965 (hereafter "the statutory date"), the Applicant was "in the service of the Chamber as a member of the staff of its offices" within the meaning of s. 16(1) and that "the appropriate authority of the Republic" within the meaning of that provision was the Public Service Commission (hereafter "the Commission"); and there is no question but that the post he held was the permanent and pensionable post to which he had been appointed by *exhibit* 1C(i). However, not only has he not been placed in any permanent and pensionable post in the service of the Republic, but he has not been placed in any specific post in such service. Further, on February 2, 1966, the Accountant-General wrote to him a letter (*exhibit* 3) which is in these terms:

"With reference to the enclosed order for payment of your salary for the month of January, 1966, I wish to inform you that such payment is made with reservation and without prejudice to the rights of the Government with regard to this payment. The Government reserves to itself the right, if and when it judges this necessary, to claim refund of this sum."

1968
Aug. 14
—
PETROS ANTONIOU
v.
REPUBLIC
(MINISTER OF
FINANCE AND
OTHERS)

On April 5, 1966, he filed his earlier application to this Court, No. 65, asking for a

"(a) declaration that the decision of the (Minister of Finance) contained in *exhibit 1* to pay Applicant's salary 'with reservation of rights' and not to consider and treat Applicant as a public servant is null and void and of no effect whatsoever;

(b) declaration that the omission of (the Commission) to replace Applicant to the public service of the Republic ought not to have been performed."

On May 3, 1966, he wrote to the "Greek Commissioner of Co-operative Societies" this letter (*exhibit 1B*):

"In compliance with an instruction from you I apply for membership of the Audit and Supervision Fund (ὑποβόλλω αίτησην προσλήψεως εἰς τὸ Ταμεῖον Ἐξελέγξεως καὶ Ἐπιθεωρήσεως).

My present application is submitted with reservation of my rights in the application No. 65/66."

On May 24, 1966, that officer wrote to the Applicant a letter (*exhibit 1A*) which reads:

"With regard to your enclosed appointment to the post of Auditor of Co-operative Establishments in the Audit and Supervision Fund, please note that any reservation made by you as per your letter dated May 5, 1966 (clearly a slip for May 3, 1966), is unacceptable."

The appointment (*exhibit 2*) is in the form of a letter headed "Department of Co-operative Development", dated May 16, 1966, and signed over the title of "Greek Commissioner of Co-operative Development". So far as relevant it reads:

1968
Aug. 14

PETROS ANTONIOU
v.
REPUBLIC
(MINISTER OF
FINANCE AND
OTHERS)

“You are hereby appointed to the temporary post of Auditor of Co-operative Societies in this Department from January 1, 1966, in accordance with the following terms:

- (a) Your appointment will be on a temporary basis,
- (b) you will not be a Government official,

.....
(j) Duties: Usual duties of Auditor of Co-operative Societies...
.....

(1) Termination of appointment: Your appointment may at any time be terminated without any reason being given by a month’s written notice from me or payment in lieu of notice of a month’s salary and cost of living allowance.

2. If you accept this appointment on the above terms, you must state such acceptance on your part on the enclosed copy of the appointment by returning it duly signed and dated by you.”

On June 4, 1966, the Applicant filed his later application to this Court, No. 136, asking for a

“(a) declaration that the decision of the Respondents contained in *exhibit 2*... to the effect that Applicant is not a public servant and/or their decision to dismiss Applicant from the public service is null and void and of no effect whatsoever;

(b) declaration that the omission of (the Commission) to emplace Applicant to the public service of the Republic ought not to have been made and whatever has been omitted should have been performed.

Note: (The application is made in conjunction with Applicant’s application No. 65/66.

On June 25, 1966, he wrote to the Greek Commissioner of Co-operative Societies a letter (*exhibit 4*), of which it is sufficient to quote the first paragraph:

“I have received your letter of May 24, 1966, and my attached appointment to the post of Auditor of Co-operative Societies in the Department of Co-operative Development which appointment I accept.”

1968
Aug. 14

—
PETROS ANTONIOU
v.
REPUBLIC
(MINISTER OF
FINANCE AND
OTHERS)

From the foregoing it is apparent that there is one cardinal issue before me and that is whether it was the duty of the Commission in the circumstances of this case (a) to place the Applicant in a post in the public service and if so (b) to place him in a permanent and pensionable post. It will be noted that at the statutory date he "was in the service of the Chamber as a member of the staff of its offices" within the meaning of s.16(1) of the 1965 Law, holding a permanent and pensionable post under it by virtue of *exhibit 1C(i)*. It follows that immediately on the enactment of the 1965 Law he was transferred to the public service *by operation of law*, no act of any kind being required in that behalf. Then according to sub-s.(1) of s. 16 a person so transferred is placed by "the appropriate authority... therein, as far as practicable in a post whose functions are comparable to the functions of the post held in the service of the Chamber"; and by sub-s. (2) such placement must be "on the same conditions of service as were applicable to (the Applicant) before that date".

Counsel of the Republic contended that the Applicant is not entitled to any relief and argued to the following effect:

1. Not having been a public officer before independence, the Applicant is not protected by the Constitution; therefore "the administration was entitled to alter his conditions of service" and defeat his rights by "abolition of posts."

2. Although at the statutory date he was "in the service of the Chamber as a member of the staff of its offices" within s. 16(1), "he could not be posted in the public service because there was no post the functions of which were comparable, since no special statutory provision was made."

3. Having, by his letter *exhibit 4*, accepted the appointment *exhibit 2*, "he has no legitimate interest" within art. 146.2 of the Constitution.

4. His present post is comparable to that which he held before the establishment of the Republic.

I may conveniently deal first with the last argument. It is not clear whether Counsel of the Republic had in mind

1968
Aug. 14

PETROS ANTONIOU
v.
REPUBLIC
(MINISTER OF
FINANCE AND
OTHERS)

“comparability” in respect of functions or “comparability” in respect of conditions of service. If the former, it must be pointed out that the comparability prescribed by s. 16(1) is one between the functions of the post to be allocated under it and those of the post “*held in the service of the Chamber*”, not those of any post *held before independence*. But since, as already stated, the functions of the post allocated to the Applicant by *exhibit 2* are the same as those carried out by him both under the Chamber and before independence, no question arises here as to functions; and what the Applicant is complaining of is not the functions of the post so allocated to him, but the fact that it is neither pensionable nor permanent. If, on the other hand, the comparability that counsel had in mind relates to conditions of service, then it must be pointed out that the relevant provision is sub-s. (2) of s. 16, which says nothing about such comparability, but expressly prescribes “the same conditions of service”; that that phrase is followed by “as were applicable to him before that date”; and that the last three words clearly refer, not to any time before independence, but to the statutory date, when the Applicant, under *exhibit 1C(i)*, held a permanent and pensionable post.

I now turn to the first argument. Counsel of the Republic did not specify the post the conditions of service relating to which were altered. In this connection he referred to the fact that a provision contained in the Budget Law 1966 for the payment of thirty-two Auditors of Co-operative Societies out of public funds was deleted by the Budget (Amendment) Law of that year. It seems that that is what he had in mind, despite his going on to describe the effect of the deletion as “abolition of posts”. Although, when each of the 1966 Laws was officially published, the Applicant, under the proviso to s. 16(1) of the 1965 Law, was a holder of the post of Auditor of Co-operative Societies, he nevertheless had a right to placement in some public post by *the Commission*. No doubt that right could be modified, or even taken away, by legislation. But it is plain that the later 1966 Law was not concerned with abolishing, or even modifying, any right conferred by the 1965 Law.

With regard to the second argument, there are no doubt posts in the Audit Department of the Government whose functions are comparable to those of Auditors of Co-operative

Societies; and as for the absence of "special statutory provision" reference may be made to the case of *Boyiatzis v. Republic*, 1964 C.L.R. 367, at p. 376:

"... it was submitted on behalf of the Respondent that the reply of the Director of Personnel, dated the 15th May, 1962, did not deny the Applicant's right to an education grant but it simply stated that it was not possible to accede to his application as the House of Representatives had not passed the Supplementary Appropriation Bill which would provide funds for education grants to public servants. This, it was contended, was not a decision, act or omission on the part of the Director of Personnel, within the provisions of art. 146.1 of the Constitution. However one looks at this, the net result was that the Applicant was not paid the education grant of £100 for the school year in question, to which he was entitled under the provisions of art. 192.1 and (7)(b), through the refusal of the Director of Personnel which is an act or decision but not an omission on the Director's part. It makes no difference whether the members of the executive failed (which they did not) in their duty to introduce a Supplementary Appropriation Bill to the House of Representatives, or the members of the House of Representatives failed to pass such a Bill, which would have provided funds for education grants to public servants, pursuant to the decision of the Supreme Constitutional Court in the *Loizides' Case* dated the 31st May, 1961."

It remains to consider the third argument. It was objected on the part of the Applicant that *exhibit 4* did not operate so as to extinguish his "legitimate interest", (a) as a matter of construction, (b) because it was not addressed to "the Government" and (c) because there was no consideration for "the acceptance" stated in it, the appointment offered by *exhibit 1A* "being the minimum that the Applicant was entitled to". Point (c) is, in my view, untenable, the doctrine of consideration not being applicable. Regarding (a) presumably what counsel for the Applicant meant was that "the acceptance" was not "voluntary". In this respect it is material to bear in mind, first, that less than two months earlier the Applicant had sent to the Greek Commissioner

1968
Aug. 14
—
PETROS ANTONIOU
v.
REPUBLIC
(MINISTER OF
FINANCE AND
OTHERS)

1968
Aug. 14

PETROS ANTONIOU
v.
REPUBLIC
(MINISTER OF
FINANCE AND
OTHERS)

of Co-operative Societies *exhibit 1B*, which refers to “an instruction” from the latter to the former “to apply for membership of the Audit and Supervision Fund” and reserves the Applicant’s rights under the application No. 65/66—that being the only one he had already made—and, secondly, that less than a month before “the acceptance” he had made the application No. 136/66. An “acceptance” which, like that under consideration, entails an unmitigated detriment, must obviously be viewed with caution; and viewing the matter in the light of the considerations just explained, I conclude that “the acceptance” was not voluntary and therefore is inoperative.

It follows from the foregoing that all the arguments put forward against the application fail. I therefore declare that the non-placement of the Applicant by the Commission in a public post is “an omission” within the meaning of art. 146.2 of the Constitution; that such omission should not have been made; and that it is the duty of the Commission to place the Applicant in some permanent and pensionable post in the public service, being a post “the functions of which are comparable” to those of the post of Auditor of Co-operative Societies. The Republic to pay the Applicant £20 costs.

Order, and order for costs, in terms.