

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHARALAMBOS STAMATIADES,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

CHARALAMBOS
STAMATIADES
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

(Case No. 226/69).

Public Service and Public Officers—Transfer of a Medical Officer by the Respondent Public Service Commission—Judicial review or control of transfer—Principles applicable well settled—Reminded—Sub judice transfer reasonably open to the Respondent Commission—In the interests of the medical services of the Republic—See, also, herebelow.

Transfer of a public officer—State of health of the public officer concerned—It is a relevant factor to be duly considered in the matter of his transfer—Applicant's state of health not proved to be such as to vitiate the sub judice decision to transfer him—See, also, hereabove.

Cases referred to:

Sentonaris v. The Greek Communal Chamber, 1964 C.L.R. 300, followed;

Vafeadis v. The Republic, 1964 C.L.R. 454.

The facts sufficiently appear in the judgment of the Court dismissing the instant recourse with no order as to costs.

Recourse.

Recourse against the transfer of the Applicant, who is a Medical Officer Class I, from Nicosia to Kyrenia.

A. Emilianides, for the Applicant.

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

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The following judgment was delivered by:—

TRIANTAFYLLIDES, J.: By this recourse the Applicant a Medical Officer, Class I, complains against his transfer from Nicosia to Kyrenia, as decided upon by the Respondent Public Service Commission at its meeting of the 28th June, 1969, (see *exhibit 3*).

The Applicant, at the material time, was posted at the Out-Patients Department of the Nicosia General Hospital, and, by the decision complained of, he was transferred to the Kyrenia Hospital. As it appears from the relevant proposal for his transfer, which was placed before the Commission by the Department of Medical Services (see *exhibit 2*), at Kyrenia the Applicant will be in charge of the whole Kyrenia District; it is, furthermore, stated in such proposal that the Applicant was selected for the Kyrenia post as being one of the most senior Medical Officers, and as possessing experience in administrative matters, too.

The Applicant had been, earlier, transferred, as from the 15th February, 1969 (see *exhibit 9*) to the Out-Patients Department of the Nicosia General Hospital from Klirou, where he was posted; he was transferred from Klirou to Nicosia on his own application, and after he had been recommended for such transfer by a Selection Board, in his Department, which met on the 23rd November, 1968, (see *exhibit 12*).

At the time, the Applicant put forward, in support of his application for transfer to Nicosia, professional reasons, the condition of his health—(especially as he had suffered dislocation of a vertebra for which he needed physiotherapy and medical supervision)—and the fact that he had served in rural areas for fourteen years.

His transfer to Nicosia, from Klirou, was decided upon by the Commission on the 30th January, 1969 (see *exhibit 4*). On the same date, the Commission dealt with a proposal, by the Department of Medical Services, to transfer from the Kyrenia Hospital to the Out-Patients Department of the Nicosia General Hospital, Dr. HjiKoutis; the Commission refused to transfer Dr. HjiKoutis, as proposed, because, at the time, the Department had not yet decided who would take over from him in Kyrenia, and the Commission refused to accept a suggestion by the Department that Dr. HjiKoutis be transferred as from “a later date when a replacement is found”.

Subsequently, on the 12th June, 1969, a meeting took place, at the Ministry of Health, at which it was decided, by the Director-General of the Ministry, the Acting Director of the Department of Medical Services and the Director of the Nicosia General Hospital, to take steps for the transfer of the Applicant to the Kyrenia Hospital, in the place of Dr. HjiKoutis; it is expressly stated in the relevant minutes (see *exhibit* 13) that at such a responsible post there had to be posted the Applicant due to seniority. Consequently, his transfer was proposed to the Commission and it was decided upon, as aforesaid, on the 28th June, 1969.

The Applicant filed this recourse on the 12th July, 1969. At the time, his transfer to Kyrenia was due to take effect as from the 14th July, 1969, and an application for a Provisional Order, suspending the taking of effect of his transfer, was made. It was ascertained, later, that on the 11th July, 1969, the Respondent Commission had decided (see *exhibit* 6) to postpone the taking of effect of the transfer of the Applicant until the 11th August, 1969, as the Applicant was on vacation leave till that date. In view of this, the application for a Provisional Order was not pursued, and this case was fixed for hearing today, so as to be determined before the 11th August, 1969.

The principles governing the right, and duty, of this Court to intervene in a case of a transfer of this nature have been stated in, *inter alia*, the judgment delivered in the case of *Sentonaris v. The Greek Communal Chamber*, 1964 C.L.R. 300, and need not be reiterated.

On the basis of all the material before the Court, and in the light of such principles, I am not satisfied that I could, or should, interfere with the transfer of the Applicant to Kyrenia, as it has been decided upon by the Respondent. It seems to be quite clear that the relevant decision was reasonably open to the Respondent Commission, in the interests of the medical services of the Republic.

I cannot agree, with learned counsel for the Applicant, that the Commission could not, or should not, have transferred the Applicant to Kyrenia, once it did not decide to do so on the 30th January, 1969—(when it decided to transfer him to Nicosia from Klirou)—even though it was faced then with the problem of the non-existence of a replacement to take over at

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Kyrenia from Dr. HjiKoutis, who was earmarked for transfer to Nicosia.

On the 30th January, 1969, all that the Commission had before it was a proposal of the Department of Medical Services that the Applicant be transferred from Klirou to Nicosia; and it accepted it. It did not have, at the time, a proposal for the transfer of the Applicant to Kyrenia, in the place of Dr. HjiKoutis; therefore, the Commission could not, then, take the initiative of transferring the Applicant from Klirou to Kyrenia, instead of to Nicosia. A proposal for the transfer of the Applicant to Kyrenia from Nicosia, was placed, later, as aforesated, before the Commission and it decided, then, to transfer the Applicant as proposed.

It is correct that the Applicant is a person whose health is suffering in certain respects, as shown by medical certificates produced before the Court (see *exhibit 11*); and, also, his wife is suffering from bronchial asthma, which, according to a relevant medical certificate (see, again, *exhibit 11*) is aggravated by a humid seaside climate.

The state of the health of the Applicant was, presumably, explained to his superiors when his application for transfer from Klirou to Nicosia was examined by the Departmental Selection Board; but, nothing is mentioned, in the Board's minutes, about the state of the health of the Applicant's wife; in all probability this subject was not referred to at all at the time, as the Applicant was not to be transferred, then, to a seaside place.

I have not been satisfied by Applicant's side that the state of the health of the Applicant, at any material time (when his transfer to Kyrenia was decided upon, in his Department or by the Respondent) was such as to render the *sub judice* decision one taken in abuse and excess of powers; the health of a public officer being, indeed, a relevant consideration in a matter of this nature (see *Vafeadis v. The Republic*, 1964 C.L.R. 454).

Actually, three of the medical certificates (in *exhibit 11*) concerning the health of the Applicant are dated the 1st August, 1969, and it might be—I am not expressing a view either way—that they present a picture which is different from the one which was in existence when it was decided to transfer the Applicant to Kyrenia; but such a picture was not, and could

not have been, at the material time, known to his superiors or to the Commission. Also, the medical certificate regarding the health of the wife of the Applicant is dated the 1st August, 1969.

The Applicant, on receipt of notification about his transfer to Kyrenia, did not seek from the Commission a reconsideration of the matter on the ground of his, or his wife's, state of health. He filed this recourse at once as he was, apparently, anxious to secure a Provisional Order postponing his transfer, which was then imminent.

But there is nothing to prevent the Applicant from placing his case even now before the Commission and seeking a re-examination thereof, on the basis of any material new fact which was not before the Commission when it decided to transfer him to Kyrenia.

In the light of all the foregoing, this recourse is dismissed; but taking into account that the Applicant was transferred quite soon after he had been posted to Nicosia, and that this must entail inconvenience for him, I am not prepared to make an order as to costs against the Applicant.

*Application dismissed;
no order as to costs.*

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