1969
Dec. 23
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GEORGHIOS HJILOUCA
v.
REPUBLIC
(CHAIRMAN COUNCIL OF REINSTATEMENT OF DISMISSED PUBLIC OFFICERS)

[TRIANTAFYLLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS HJILOUCA,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE CHAIRMAN OF THE COUNCIL OF REINSTATEMENT OF DISMISSED PUBLIC OFFICERS,

Respondent.

(*Case No.* 303/68).

Collective organ—Council for Reinstatement of Dismissed Public Officers—Established and functioning under the Dismissed Public Officers Reinstatement Law, 1961 (*Law No.* 48 *of* 1961)—*Discretion—Decision dismissing an application for reinstatement—Reasonably open both in law and in fact.*

Discretionary powers—No abuse of—Reconsideration of previous decision which had been annulled by the Court—Reasonably open to the Respondent Council to reach the decision complained of—See also supra; cf. infra.

Collective organ—Meeting—Minutes—Absence of minutes—In the absence of legislative provision regulating the matter, the non-keeping of minutes by a collective organ does not, in itself, vitiate a particular administrative decision—Unless the absence of such minutes tends to deprive the decision concerned of due reasoning—But the sub judice decision is duly reasoned and, moreover, so framed that it contains in substance what one would expect to find recorded in the minutes of the Respondent Council—The case of Georghiades v. The Republic (1966) 3 *C.L.R.* 252 distinguished.

Minutes—Lack of—Not necessarily vitiating the decision concerned—See supra.

Reasoning of administrative decisions—See supra.

Collective organ—Proceedings before the Respondent Council—When reconsidering one of its previous decisions which had been annulled

by the Court—See HjiLouca v. The Republic (1966) 3 C.L.R. 854—*No need to invite Applicant to be present—Nor was it necessary to afford him opportunity to question witnesses heard by the Council at his request—All the more so, that the Respondent Council is not a disciplinary body but merely a collective organ engaged in normal administration, as contra-distinguished from matters of a disciplinary nature.*

Irregularity—Which cannot be treated as being of a material nature—And which, therefore, cannot lead to the annulment of the administrative decision.

By this recourse the Applicant complains against a decision of the Respondent Council for the Reinstatement of Dismissed Public Officers, set up under the Dismissed Public Officers Law, 1961 (Law No. 48 of 1961) as amended by Law No. 5 of 1962, by virtue of which decision the request of the Applicant to be reinstated in the public service under the said Law was refused.

Dismissing the recourse, the Court:-

Held, (1). It is well settled in Administrative Law that, in the absence of any legislative provision regulating such a matter, the non-keeping of minutes by a collective organ does not, in itself, vitiate a particular administrative decision, except if the absence of such minutes tends to deprive the decision of due reasoning (see Kyriakopoulos on Greek Administrative Law, 4th edition, vol. 2, page 26; Stasinopoulos on the Law of Administrative Acts 1951, page 223; Decisions of the Greek Council of State in cases No. 166(29) and 107(36)).

(2) But in the present case there can be no doubt that the *sub judice* decision is duly reasoned; and, moreover, it is so framed that it contains in substance what one would expect to find recorded in the minutes of the Respondent Council, including the evidence (*Georghiades* v. *The Republic* (1966) 3 C.L.R. 252, *distinguished*).

(3) In a case of this nature, and in the absence of any legislative provision for the purpose, there was no need to invite the Applicant to be present at the proceedings before the Respondent Council; likewise, it was not necessary to afford him an opportunity to question the two witnesses who were heard by the Respondent Council at the relevant meeting. This was not an instance of a disciplinary or other proceeding

of such a nature as would render it necessary to give the Applicant the opportunity to contradict averments against him and to question witnesses. (See Conclusions from the Jurisprudence of the (Greek) Council of State, 1929–1959, p. 112; Decision of the Greek Council of State in case No. 1262(46) reported in Zacharopoulos Digest of the Decisions of the (Greek) Council of State, 1935–1952, page 313, paragraph 136; see also Odent on Contentienx Administratif, Volume IV (1965–1966) page 1165 et seq.).

(4) Furthermore, the Applicant never asked the Council that he desired to be present when the two witnesses concerned were to be heard. In this respect it must be pointed out that this is not a case in which the Council heard witnesses who were expected to depose against the Applicant; they were witnesses who were proposed by the Applicant himself and who in fact testified in accordance with summaries of their evidence which were sent to the Respondent by counsel acting for the Applicant.

(5) Even if an irregularity has occurred in the proceedings of the Council, I would unhesitatingly state that in the circumstances of the present case it could not be treated as being of a material nature so as to lead to the annulment of the *sub judice* decision (see Conclusions from the Jurisprudence of the (Greek) Council of State, 1929–1959 p. 266; also Stasinopoulos on the Law of Administrative Disputes (1964) p. 215; see also Odent, *supra* p. 1136 et seq.).

Application dismissed.
No order as to costs.

Cases referred to:

Georghiades v. *The Republic* (1966) 3 C.L.R. 252; *distinguished;*

Constantinou v. *The Republic* (1966) 3 C.L.R. 793;

Decisions of the Greek Council of State in cases No. 166(29) and 107(36); see also case 1262(46) reported in Zacharopoulos Digest of the Decisions of the Greek Council of State, 1935–1952, page 313, paragraph 136.

Recourse.

Recourse against the refusal of the Respondent Council to treat Applicant as an "entitled Officer" for the purposes of

the Dismissed Public Officers Reinstatement Law, 1961 (Law 48/61).

L. Clerides, for the Applicant.

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

Cur. adv. vult.

The facts sufficiently appear in the judgment* of the Court delivered by:

TRIANTAFYLLIDES, J.: By this recourse the Applicant complains against a decision of the Respondent Council by virtue of which the application of the Applicant as "an entitled officer" under the provisions of the Dismissed Public Officers Reinstatement Law, 1961 (Law 48/61), as amended by the Public Officers Reinstatement (Amendment) Law, 1962 (Law 5/62), was dismissed; this decision was communicated to the Applicant by letter of the 4th July, 1968 (*exhibit* 1).

The full text of such decision has been attached to the Opposition (see *exhibit* 2) it was reached on the 5th June, 1968, and it is reasoned at great length.

The Respondent came to deal with the application of the Applicant by way of reconsideration of his case, after a previous decision of the Respondent, dismissing the application of the Applicant, had been annulled after a recourse by the Applicant (see *HjiLouca* v. *The Republic* (1966) 3 C.L.R. 854).

The relevant facts are set out in the judgment given in the said earlier recourse and are, also, stated in the decision of the Respondent which is attacked by means of the present recourse; so, I need not repeat them in this judgment.

One of the main contentions of the Applicant in these proceedings is that the procedure adopted by the Respondent, in reconsidering the case of the Applicant, is defective in that no minutes were kept by the Respondent and, especially, because no separate official record was made of the evidence of two witnesses (Mr. Hassabis and Mr. Constantinides) who were heard by the Respondent for the purpose.

In order to examine this contention of the Applicant in its proper context it must not be lost sight of that in this case

*For final decision on appeal see (1971 3 S.C. 434 to be reported in due course in (1971) 3 C.L.R.

the Respondent acted as a collective organ engaged in normal administration, as contradistinguished from matters of a disciplinary nature.

It is well settled in Administrative Law that, in the absence of any legislative provision regulating such a matter, the non-keeping of minutes by a collective organ does not, in itself, vitiate a particular administrative decision, except if the absence of such minutes tends to deprive the decision of due reasoning (see Kyriakopoulos on Greek Administrative Law, 4th edition, vol. 2, p. 26; Stasinopoulos on the Law of Administrative Acts (1951) p. 223; as well as the decisions of the Greek Council of State in cases 166(29) and 107(36)).

In the present instance there can be no doubt that the *sub judice* decision is duly reasoned; and, moreover, it is so framed that it contains, in substance, what one would expect to find recorded in minutes of the Respondent—if such minutes had been kept—including the evidence given by the two aforementioned witnesses, such evidence having been recorded in the decision on the basis of notes kept by all three members of the Respondent (see the evidence of Mr. E. Yiannakis, a member of the Respondent).

In relation to the issue of the absence of minutes learned counsel for the Applicant has referred me to *Georghiades* v. *The Republic* (1966) 3 C.L.R. 252. In my opinion that case is clearly distinguishable from the present one, because there the absence of minutes, or other record, in relation to certain steps that had been taken did lead the Court to treat such steps as having been outside the formal proceedings of the collective organ involved in that case.

I, therefore, have reached the conclusion that in the circumstances of this case, and in the light of the relevant principles, the absence of minutes of the Respondent (including a separate official record of the evidence given) would not justify an annulment of the *sub judice* decision.

The next point that was raised by counsel for the Applicant was that the Applicant was not called to be heard by the Respondent and, particularly, that he was not invited to be present in order to question the aforesaid witnesses when they gave evidence before the Respondent.

In my opinion in a case of this nature, and in the absence of any legislative provision for the purpose, there was no need

to invite the Applicant to be present at the proceedings before the Respondent (see Conclusions from the Jurisprudence of the Greek Council of State, 1929–1959 p. 112; also, the decision of the Greek Council of State 1262(46) reported in Zacharopoulos Digest of the Decisions of the Greek Council of State, 1935–1952, p. 313, para. 136); likewise, it was not necessary to afford him an opportunity to question the two witnesses who were heard by the Respondent. This was not an instance of a disciplinary or other proceeding of such a nature as would render it necessary to give the Applicant the opportunity to contradict averments against him and to question witness (useful reference in this connection may be made, also, to Odent on Contentieux Administratif, volume IV (1965–1966) p. 1, 165 et seq.).

In any case, from the relevant file of the Respondent (see *exhibit* 3) it is clear that the Applicant had already been called before, and been heard by, the Respondent during the examination of his case prior to Respondent reaching its first decision in the matter (the one annulled by means of the earlier recourse); and he was then given an opportunity to add anything which he would like to add to a written statement of his regarding his claim.

Also, in the said file, there is to be found a lengthy statement of the relevant facts, prepared by counsel for the Applicant before the aforesaid first decision of the Respondent. Lastly, when counsel for the Applicant—after the successful outcome of the recourse against such decision—requested that the Respondent should proceed to reconsider the case, he did not ask that the Applicant should be called before the Respondent to be heard further (see his letter dated the 27th January, 1967, in *exhibit* 3).

Nor did counsel for Applicant, in his letter in question, request that the Applicant should be present when the two witnesses concerned—(whom he, earlier, had proposed as witnesses to be called before the Respondent)—were to be heard.

In this respect it must be pointed out that this is not a case in which the Respondent heard witnesses who were expected to depose against the Applicant; they were witnesses, who, as already stated, were proposed by the Applicant and who in fact testified before the Respondent in accordance with

summaries of their evidence which were sent to the Respondent by counsel for the Applicant (see in the file *exhibit* 3).

It has been contended that as the Applicant was not present when the said witnesses testified before the Respondent he did not have the opportunity to put questions to them and, so, bring out some points in his favour. But, surely, there was nothing to prevent the Applicant from obtaining in advance from his witnesses affidavits containing all the relevant information which they could provide in support of his claim, and these affidavits could have been placed in due time before the Respondent.

From the foregoing it is clear that I have not found that any irregularity has occurred in the proceedings of the Respondent when re-examining the case of the Applicant. But even if an irregularity had occurred, as alleged by the Applicant, I would unhesitatingly say that in the circumstances of the present case it could not be treated as being of a material nature so as to lead to the annulment of the *sub judice* decision (see Conclusions from the Jurisprudence of the Greek Council of State 1929–1959, p. 266; also, Stasinopoulos on the law of Administrative Disputes (1964) p. 215; and Odent (*supra*) at p. 1136 et seq.).

Counsel for the Applicant has submitted, too, that the decision of the Respondent was not reached in accordance with the letter and spirit of the relevant legislation, as expounded in *Constantinou* v. *The Republic* (1966) 3 C.L.R. 793. I cannot agree with such submission: Having looked at the fully reasoned decision of Respondent, as well at all the relevant material before me, I am satisfied that the members of the Respondent, properly functioning as a collective organ, reached a conclusion which was reasonably open to them both in law and in fact.

Before concluding I might point out that from the evidence of Mr. Yiannakis, a member of the Respondent, it appears that there was a mistaken impression that one of the witnesses heard by the Respondent, Mr. Hassabis, had given evidence in the proceedings of the earlier recourse in this matter, though, actually, he did not give evidence at that time (see *exhibit* 4); but in my view this establishes neither a misconception about a material fact nor an otherwise material misconception; it is quite obvious that the "evidence" of Mr. Hassabis was the

summary of the proposed evidence of Mr. Hassabis which had been placed before the Respondent, and subsequently before the Court during the earlier recourse (see *exhibit* 2 in *exhibit* 4).

For all these reasons I find that this recourse fails and it has to be dismissed accordingly; but as I regard it as a genuine effort on the part of the Applicant to claim something to which he bona fide considered himself to be entitled I do not think that there should be any order as to costs.

Application dismissed; *no order as to costs.*