

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

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ATHOS
GEORGHIADES
v.
REPUBLIC
(PUBLIC
SERVICE
COMMISSION)

ATHOS GEORGHIADES,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE PUBLIC
SERVICE COMMISSION,

Respondent.

(Case No. 297/71).

Public Officers—Transfers—Recourse against transfer—Application for a provisional order suspending effect of transfer until final determination of the recourse—Principles laid down in Georghiadis (No. 1) v. The Republic (1965) 3 C.L.R. 392 and Kouppas v. The Republic (1966) 3 C.L.R. 765 ; followed—Court not satisfied that the applicant will suffer irreparable harm or that even if such harm were to be suffered his personal interest should not be overridden by the public interest—Application for provisional order refused.

Provisional Order in a recourse under Article 146 of the Constitution—Principles upon which the Court will grant or refuse such order—See supra.

Recourse under Article 146 of the Constitution—Application for a provisional order suspending effect of the decision subject matter of the recourse—See supra.

The applicant in this recourse applied for a provisional order suspending the effect of his transfer from Yialousa to Nicosia until final determination of his recourse against that transfer. After reviewing the facts and referring to the legal principles applicable in the matter, the Court refused the provisional order applied for and :—

Held, (1). In the present case I have weighed carefully the grounds relied upon by the applicant in support of his application for a provisional order and I have not been satisfied either that he will suffer irreparable harm or that this is a case in which, even if such harm were to be suffered, his personal interest should not be overridden by the public interest.

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(2) This application is, therefore, refused. There will be no order as to costs.

Application for provisional order refused. No order as to costs.

Cases referred to :

Georghiades (No. 1) v. The Republic (1965) 3 C.L.R. 392 ;
Kouppas v. The Republic (1966) 3 C.L.R. 765 ;
Jordanou (No. 2) v. The Republic (1966) 3 C.L.R. 696 ;
Artemiou (No. 2) v. The Republic (1966) 3 C.L.R. 562 ;
Jordanou (No. 3) v. The Republic (1966) 3 C.L.R. 705.

Application for a Provisional Order.

Application for a provisional order suspending the effect of the transfer of the applicant from Yialousa to Nicosia until the final determination of the recourse against the validity of such transfer.

The applicant appeared in person.

S. Nicolaidis, Counsel of the Republic, for the respondent.

The following decision was delivered by :—

TRIANTAFYLLIDES, P. : The applicant has applied for a provisional order suspending the effect of his transfer from Yialousa to Nicosia until the determination of this recourse, which challenges the validity of such transfer.

The applicant was notified about his transfer by letter of the respondent Public Service Commission which is dated the 26th May, 1971, and was received by him on the 4th June, 1971.

The applicant protested to the Commission against his transfer and he was informed by letter which is dated the 19th July, 1971, and was received by him on the 4th August, 1971, that the Commission was not prepared to alter its relevant decision. The applicant was, of course, not entitled to assume that his protest would have resulted in the Commission deciding not to transfer him and, therefore, he should have been making, as from the 4th June, 1971, the necessary arrangements in order to be able to assume duties in Nicosia on the date when his transfer was to take effect (such date was initially the 2nd August, 1971, but later on it was changed to the 14th August, 1971).

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The main grounds on which the applicant relies in support of his application for a provisional order are, first, that his transfer was not decided due to the exigencies of the service but because of unfounded accusations against him regarding disciplinary matters in respect of which he was never given an opportunity to be heard, secondly, that if the transfer takes effect he will suffer irreparable harm because of the great inconvenience and injury to his dignity to be caused by the transfer, and, thirdly, that the condition of the health of his wife, who is suffering from partial paralysis of her left leg and hand, is such that she needs constant help and that she has friends at Yialousa who help her but she knows nobody in Nicosia.

The power of this Court to make a provisional order suspending the taking of effect of an administrative decision has to be used very sparingly and it cannot be resorted to unless by implementing the administrative decision, while a recourse against it is pending, irreparable harm, that is harm which cannot be compensated for later adequately in terms of money, will be caused to the applicant ; but even if such harm will occur the order should be refused if by granting it there will be caused serious obstacles to the proper functioning of the administration ; for the general interest of the public should override the personal interest of an applicant (see *Georghiadis* (No. 1) v. *The Republic* (1965) 3 C.L.R. 392, *Kouppas* v. *The Republic* (1966) 3 C.L.R. 765).

The above principles were applied in, *inter alia*, the following cases of transfers of public officers in which provisional orders were applied for : In *Iordanou* (No. 2) v. *The Republic* (1966) 3 C.L.R. 696 where it was—among other things—contended, as in the present case, that the transfer was, in effect, a disciplinary one and that it would interfere seriously with the family life of the applicant, whose wife was not in good health ; in *Artemiou* (No. 2) v. *The Republic* (1966) 3 C.L.R. 562 where the ill-health of the applicant's wife was mainly relied on in applying for a provisional order ; and in *Iordanou* (No. 3) v. *The Republic* (1966) 3 C.L.R. 705. In the two latter cases provisional orders were refused and in the first one the transfer was postponed by such an order for only two weeks on the ground that the applicant was a trade union official and he needed time to make arrangements as regards his trade union activities ; on all three instances it was found that the public interest should override the personal interests of the applicants.

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In the present case I have weighed carefully the grounds relied on by the applicant in support of his application for a provisional order and I have not been satisfied either that he will suffer irreparable harm or that this is not a case in which, even if such harm were to be suffered, his personal interest should not be overridden by the public interest.

This application is, therefore, refused ; but in the light of all relevant circumstances I have decided to make no order of costs against the applicant.

*Application refused ;
no order as to costs.*