

[TRIANTAFYLLOIDES, P.]
IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION
COSTAS CLEANTHOUS (No. 1),

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION.

Respondent.

(Case No. 195/72).

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COSTAS
CLEANTHOUS
(No. 1)
v.
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(PUBLIC
SERVICE
COMMISSION)

Provisional Order—Suspending the effect of an appointment to the post of District Officer, pending the determination of a recourse challenging the validity of such appointment—Provisional order applied for, refused—Power to make provisional orders to be used sparingly—Principles applicable—Whether there exists obvious certainty that recourse will succeed—And whether hardship by refusing the order so great as to amount to irreparable harm—Blow to applicant's prestige—Not a consideration justifying the making of a provisional order—The difficulties to be caused to good administration by granting the order (and postponing the effect of the sub judice decision) to be taken into account—Application for provisional order refused.

Recourse under Article 146 of the Constitution—Provisional order suspending effect of the sub judice decision pending determination of the recourse—See supra.

This was an application for a provisional order suspending the effect of the appointment of the interested party to the post of District Officer pending determination of the recourse filed under Article 146 of the Constitution whereby the applicant challenged the validity of such appointment.

After reviewing the facts and restating the well settled principles governing the power of the Court to make provisional orders, the learned President refused this application on the main grounds that the hardship which would be caused to the applicant by refusing the order is

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not so great as to amount to irreparable harm; and, also, in view of the considerable difficulties likely to be caused to the good functioning of the administration by granting such order.

Note: Substantially on the same grounds, the learned President refused on the same day (*viz.* 31 July, 1972) a similar application in Case No. 209/72 with the same applicant. (See this case at p. 376).

Cases referred to:

Nedjati and The Republic, 2 R.S.C.C. 78;

Georghiades (No. 1) v. The Republic (1965) 3 C.L.R. 392;

Cyprus Industrial and Mining Co. Ltd. (No. 2) v. The Republic (1966) 3 C.L.R. 474;

Leonida v. The Republic (1965) 3 C.L.R. 553;

Artemiou (No. 2) v. The Republic (1966) 3 C.L.R. 562;

Iordanou (No. 2) v. The Republic (1966) 3 C.L.R. 696;

Clerides and Others (No. 1) v. The Republic (1966) 3 C.L.R. 701;

Iordanou (No. 3) v. The Republic (1966) 3 C.L.R. 705;

Kouppas v. The Republic (1966) 3 C.L.R. 765;

Galazi v. The Minister of Education (1967) 3 C.L.R. 577;

Hadjikyriakou and Others (No. 1) v. The Council of Ministers (1968) 3 C.L.R. 1;

Sofocleous v. The Republic (1971) 3 C.L.R. 345;

Application for Provisional Order.

Application for a provisional order postponing the taking of effect of the decision of the respondent Commission by virtue of which the interested party, K. Marcou, was appointed to the post of District Officer, with effect from the 1st August, 1972, pending the final determination of a recourse against the validity of such appointment.

K. Talarides, for the applicant.

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

K. Michaelides, for the interested party.

Cur. adv. vult.

The following decision was delivered by :-

TRIANTAFYLLIDES, P. : At the present stage of the proceedings in this recourse I am dealing with an application by the applicant for a provisional order postponing until the outcome of this recourse the taking of effect of the decision of the respondent Commission which is the subject matter of the recourse and by means of which, on the 6th July, 1972, the interested party, K. Marcou, was appointed to the post of District Officer, with effect from the 1st August, 1972.

The applicant and the interested party were among the three candidates who were selected by the Commission, out of fourteen candidates, in the process of reaching a final decision as regards the candidate to be chosen for appointment to the post in question.

At the material time the applicant, who holds the post of Senior Administrative Officer since the 15th July, 1971, was performing the duties of District Officer in Kyrenia in an acting capacity; he had been assigned such duties as from the 31st July, 1971; previously, while being originally an Administrative Officer, 1st grade, and subsequently, a Senior Administrative Officer, the applicant had been performing the duties of Assistant District Officer in Kyrenia since the 1st July, 1968.

The interested party held the post of Assistant District Officer, in Nicosia, from 1963 to 1966; and then, due to a re-organization of the public service, he became an Administrative Officer, 1st grade, as from the 1st January, 1967, and was promoted to Senior Administrative Officer as from the 15th July, 1971. He has remained all along in Nicosia, but after he was appointed to the post of District Officer, as aforesaid, he has been posted to Kyrenia where he is to take up his duties on the 1st August 1972 (that is tomorrow).

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The power of making provisional orders, such as the one applied for in this case, has to be used sparingly (see Kyriacopoulos on Greek Administrative Law—Κυριακοπούλου Ἑλληνικὸν Διοικητικὸν Δίκαιον—4th ed., vol. C. p. 148).

The principles to be applied in dealing with an application of this nature are to be found, *inter alia*, in Tsatsos on the Recourse for Annulment (Τσάτσου Ἡ Αἰτήσεις Ἀκυρώσεως) 3rd ed., p. 423 et seq. (and see, also, *Nedjati and The Republic*, 2 R.S.C.C. 78, *Georghiades (No. 1) v. The Republic* (1965) 3 C.L.R. 392, *Cyprus Industrial and Mining Co. Ltd. (No. 2) v. The Republic* (1966) 3 C.L.R. 474, *Leonida v. The Republic* (1965) 3 C.L.R. 553, *Artemiou (No. 2) v. The Republic* (1966) 3 C.L.R. 562, *Iordanou (No. 2) v. The Republic* (1966) 3 C.L.R. 696, *Clerides and Others (No. 1) v. The Republic* (1966) 3 C.L.R. 701, *Iordanou (No. 3) v. The Republic* (1966) 3 C.L.R. 705, *Kouppas v. The Republic* (1966) 3 C.L.R. 765, *Galazi v. The Minister of Education* (1967) 3 C.L.R. 577, *Hadjikyriakou and Others (No. 1) v. The Council of Ministers* (1968) 3 C.L.R. 1, *Sofocleous v. The Republic* (1971) 3 C.L.R. 345).

In the present case there arise, indeed, for determination serious issues, but it cannot be said that there exists at present an obvious certainty that the recourse will succeed on any one of such issues and, therefore, the provisional order applied for cannot be granted on such a ground.

I have considered the matter of the hardship to be suffered by the applicant in case I refuse to grant the provisional order: I cannot accept that such hardship will be so great as to amount to irreparable harm. In the absence of really very special circumstances—and I am not satisfied that such circumstances exist in the present case—a provisional order cannot be granted for the sake of sparing the feelings of a public officer who feels aggrieved and disappointed because another person was appointed to a post to which he expected to be appointed himself; the aggrieved public officer can, of course, attack the appointment, about which he complains, by a recourse, as it has been done in this case, but he is not entitled to expect—in the absence of really very

special circumstances—that the functioning of the administration will be impeded by preventing the said appointment from taking effect pending the outcome of his recourse.

It is correct that, as the applicant states in an affidavit filed in support of his application for a provisional order, the interested party will as from tomorrow take over from him the duties of District Officer in Kyrenia, which the applicant is now performing, and the applicant will be transferred to the Nicosia District Office; and he seeks to avert this by means of a provisional order, pending the outcome of this recourse, because his replacement by the interested party will, allegedly, be a blow to his prestige, which will cause him psychological trauma injurious to his health; this is, indeed, a predicament in which any public officer may possibly find himself, in a case where somebody else is appointed substantively to a post the duties of which such officer was previously carrying out in an acting capacity, with the expectation that eventually he would be appointed himself to that post on a substantive basis. I do not, however, regard this consideration as justifying—in the light of the principles governing the exercise of my powers in this respect—the making of the provisional order applied for. In this respect I have to take into account, too, the difficulties which may be caused to good administration if an appointment to a post therein, such as the one with which we are concerned, is postponed; because it cannot be reasonably disputed that, it is, for many obvious reasons, to the interest of good administration that posts in it, and particularly important posts, be held by officers substantively appointed thereto and not by officers acting in them.

I have, therefore, decided to refuse the application of the applicant for a provisional order.

I think, in view of the nature of the issues raised in this case, that it deserves an early trial; and, also, that, in the light of all relevant considerations, there should be no order as to costs regarding this application.

Application dismissed.

Note: The recourse was withdrawn later before judgment.

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