

1974
May 16

[TRIANTAFYLIDIS, P., STAVRINIDES, L. LOIZOU,
HADJIANASTASSIOU, MALACHTOS, JJ.]

G. THALASSINOS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

G. THALASSINOS,

Appellant.

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(*Revisional Jurisdiction Appeal No. 123*).

Public Officers—Promotions—Secondment to post of Labour Officer 2nd Grade—Head of Department—Director-General stating before the respondent Public Service Commission that he has set up a Departmental Board in order to assist him in selecting for recommendation the most suitable officers—Probability that the Commission has been labouring under the material misconception that the Director-General had conveyed to it the recommendations of a Departmental Board which had been established under section 36 of the Public Service Law, 1967 (Law No. 33 of 1967)—Appeal allowed—Sub judice administrative decision (supra) annulled because of substantial doubt about the validity of its factual basis.

Administrative decision—Annulment because of substantial doubt about the validity of its factual basis viz. because of a substantial doubt as to whether or not there has been a misconception as there is a great probability that the respondent Commission acted under a material misconception of the factual position of the case.

This is an appeal from the first instance decision of a Judge of this Court (see (1973) 3 C.L.R. 386) whereby he dismissed the recourse of the appellant against the decision of the respondent Commission directing the secondment of five other public officers to the post of Labour Officer, 2nd Grade.

It would seem that at the relevant meeting of the Commission the Director-General of the Ministry stated that he had set up a Departmental Board in order to assist him in selecting the most suitable officers to fill the existing vacancies. In the

events of this case (see details *post* in the judgment) the Supreme Court, allowing the appeal and annulling the secondments complained of:-

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Held, (1) In view of the foregoing we cannot exclude the really great probability that the Commission, in making the secondments complained of, has been labouring under the material misconception that the Director-General had conveyed to it the recommendations of a Departmental Board which had been established under section 36 of the Public Service Law, 1967 (Law No. 33 of 1967).

(2) And we have described it as "material misconception" because there is in our opinion a real difference, indeed, between the functioning of a Departmental Board, established by the Council of Ministers under the said section 36, and a meeting—as in fact it has happened—between the Director-General and two senior officers of his Ministry for the purpose of exchanging views about the candidates who were to be recommended.

(3) For this reason this appeal is allowed because there exists, to put it at its lowest, substantial doubt about the validity of the factual basis of the *sub judice* decision of the respondent Commission; and this being so the proper course for us, as administrative Court, is not to allow this decision to stand, but to set it aside, so as to give an opportunity to the Commission to re-examine the whole matter free from any misconception; as a result the secondments of the five interested parties have to be annulled.

Appeal allowed. No order as to costs.

Appeal.

Appeal from the judgment of a Judge of the Supreme Court (A. Loizou, J.) given on the 30th June, 1973, whereby appellant's recourse against the decision of the respondent to promote the interested parties to the post of Labour Officer 2nd Grade, in preference and instead of the appellant was dismissed.

L. Clerides, for the appellant.

S. Georghiades, Senior Counsel of the Republic, for the respondent.

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The judgment of the Court was delivered by:—

TRIANTAFYLIDIS, P.: This is an appeal from the first instance decision* of a Judge of this Court by means of which there was dismissed the recourse of the appellant against the secondment of five other public officers to the post of Labour Officer, 2nd Grade. This decision was taken by the respondent Public Service Commission on the 7th September, 1970.

The learned trial judge has had to deal in his judgment with numerous issues which were raised before him at the trial, but the appeal has been limited to some of such issues only.

In dealing with them it is useful to refer to the minutes of the meeting of the Commission on the 7th September, 1970; the relevant part of them is as follows:—

“ Mr. Sparsis stated that, in order to assist the Commission in selecting the most suitable officers to fill the existing vacancies, a Departmental Board consisting of the Senior Industrial Relations Officer, the District Labour Officer, Nicosia, and himself was set up. The Board realising the importance of their work and basing their decision on the personal knowledge of the merits of each individual candidate, did their best to make a fair comparison between candidates regarding their suitability for promotion.

Bearing in mind the findings of the Board as well as the performance of the candidates at the interview, Mr. Sparsis recommended the following officers to fill the existing vacancies in the post of Labour Officer, 2nd Grade:—”

It has been submitted before us, by counsel for the appellant, that the “ Departmental Board”, which is mentioned in the above extract from the minutes and which, as it has transpired during the proceedings before the trial Judge, was not a Board established under section 36 of the Public Service Law, 1967 (Law 33/67), was set up, by the Director-General of the Ministry concerned, Mr. Sparsis, contrary to law, because a Board for the particular purpose could only have been established under the said section 36.

In our view the Director-General was fully entitled to consult his subordinates, especially those of higher rank, so that he

* Published in (1973) 3 C.L.R. 386.

could decide about the recommendations he was going to make in relation to the candidates for secondment to the post of Labour Officer, 2nd. Grade; but he was, definitely, not entitled to establish himself a Departmental Board, which is something that could be done only by the Council of Ministers under section 36 of Law 33/67.

There was produced before us during the hearing of this appeal a document dated 7th September, 1970, which was not produced before the trial Judge.

This document shows that on the same day when the relevant meeting of the respondent Commission took place the Director-General met with the Senior Industrial Relations Officer and with the District Labour Officer (Nicosia) and it was decided whom to recommend to the Commission for secondment; and, actually, all the five interested parties, whose secondments are challenged in these proceedings, were among those who were so recommended; whereas the appellant was not.

We can find nothing wrong in law with the above procedure; it was not only lawful, but, also, desirable, to ensure that the Director-General, who was going to appear before the Commission as a Head of Department, would be fully informed about the merits of the candidates.

Also, we cannot agree with counsel for the appellant that the Director-General was not entitled to express at the meeting of the Commission his own views about the candidates and that it was not open to him to base his views, not only on the opinions expressed by his subordinates at the aforementioned Departmental meeting, but, also, on the assessment of the candidates made by him during their interviews, in his presence, before the Commission; we do not regard that by acting in this way he has usurped any of the functions of the Commission; so we are in full agreement with the learned trial Judge on this point.

What has given us quite some difficulty in dealing with this case is the contention of counsel for the appellant that the way in which the Director-General described to the Commission (as it appears from the above quoted extract from its minutes) the meeting which he had had, as aforesaid, with two of his senior subordinates, renders it, to say the least, very probable that the Commission has erroneously thought that there had been established and met a Departmental Board under section

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36 of Law 33/67; we are in agreement with counsel for the appellant on this point and we are strengthened in this view by the fact that, as it appears from the record of the case, counsel for the respondent was, also, misled himself by appearances and, submitted, at first, at the hearing before the trial Judge, that there was nothing on record indicating that the “ Departmental Board”, mentioned in the minutes of the Commission, had *not* been duly set up under section 36; it was only later, after receiving further instructions, that he found out that this was not so and he informed the trial Judge accordingly.

In view of the foregoing we cannot exclude the really great probability that the Commission, in making the secondments complained of, has been labouring under the material misconception that the Director-General had conveyed to it the recommendations of a Departmental Board which had been established under section 36; and we have described it as a “ material misconception” because there is, in our opinion, a real difference, indeed, between the functioning of a Departmental Board, established by the Council of Ministers under the said section, and a meeting—as in fact it has happened—between the Director-General and two senior officers of his Ministry for the purpose of exchanging views about the candidates who were to be recommended.

For this reason this appeal is allowed because there exists, to put it at its lowest, substantial doubt about the validity of the factual basis of the *sub judice* decision of the Commission; and this being so the proper course for us, as an administrative Court, is not to allow this decision to stand, but to set it aside, so as to give an opportunity to the Commission to re-examine the whole matter free from any misconception; as a result the secondments of the five interested parties have to be annulled; we have, however, decided, in the light of all relevant considerations, not to make an order as to the costs of this appeal against the respondent.

*Appeal allowed. No order
as to costs.*