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IACOVOS
M. KOUMA
v.
CHIEF OF
POLICE

{MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IACOVOS M. KOUMA,

Applicant,

and

THE CHIEF OF POLICE,

Respondent.

(Case No. 422/72).

Police—Temporary promotions and acting appointments—Regulations 10 and 11 of the Police (General) Regulations, 1958—Police Sergeant—Allegedly performing duties of a higher rank—Applying for temporary promotion to rank of Sub-Inspector—His application rightly treated as an application for a temporary promotion under Regulation 10 and not for an acting appointment under Regulation 11—And dealt with by the Deputy Chief of Police and not the Divisional Commander—Rightly refused since applicant did not possess the required qualifications. 5

Equality—Principle of equality—Article 28 of the Constitution—Police Sergeant's application for temporary promotion to post of Sub-Inspector due to performance by him of duties of a higher rank—Applicant never required and in fact never performed duties of a higher rank—Rejection of his application not amounting to unequal treatment under the said Article as the applicant was never in the same situation with other members of the police force who were required to perform duties of a higher rank. 10 15

The applicant, a police sergeant, complains against the refusal of the respondent to appoint him to the post of Sub-Inspector.

By means of a letter dated 21st September, 1972 addressed to the Deputy Chief of Police, applicant alleged that he was performing the duties of an officer due to the absence of such officer on account of illness; and after complaining of unequal treatment he asked to be accorded justice by his "temporary promotion to the rank of Sub-Inspector according to the Police General Regulations". 20 25

He received a reply to the above letter from the Deputy Chief of Police where he was advised to try to pass the prescribed examinations for promotion.

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Counsel for applicant contended:

- 5 (a) That the applicant was performing the duties of a Chief Inspector to the knowledge of the Divisional Commander; and since the latter was aware of what the applicant was doing he had a duty under Regulation 11 of the Police (General) Regulations, 1958 to appoint him to act in the rank of Sub-Inspector as under this regulation it was not necessary for the applicant to possess the required qualifications as in the case of regulation 10 which deals with temporary promotions.
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- 15 (b) That the reply to applicant's application by the Deputy Chief of Police amounts to an express refusal to appoint him to act as a Sub-Inspector and, consequently it was taken by the *inappropriate organ*, as in the present case, by virtue of regulation 11, the appropriate organ was the Divisional Commander and not the Chief of Police.
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- 25 (c) That since other members of the Police Force who were required to perform duties of a higher rank were appointed to act in that rank, applicant has been subjected to unequal treatment contrary to Article 28 of the Constitution, because he was not so appointed.

30 *Held*, (1) It is abundantly clear from applicant's letter dated 21st September, 1972 (quoted at pp. 105-106 of the judgment *post*) that he applied for a temporary promotion under regulation 10 and not for an acting appointment under regulation 11 and very rightly the Deputy Chief of Police treated his application as such and replied accordingly, since admittedly applicant did not possess the required qualifications.

35 (2) It is clear from the evidence that applicant was never required and in fact never performed duties of a higher rank. So, no question of appointment under regulation 11 or promotion under regulation 10 ever arose in the present case. Consequently, the allegation of unequal treatment under Article 28 of the Constitution cannot stand as the applicant was never in the same situation with other members of the police force who

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were required to perform duties of a higher rank. (See *Republic v. Arakian and Others* (1972) 3 C.L.R. 294).

Application dismissed.

Cases referred to:

Republic v. Arakian and Others (1972) 3 C.L.R. 294.

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Recourse.

Recourse against the refusal of the respondent to appoint applicant to the post of acting Sub-Inspector.

K. Talarides, for the applicant.

N. Charalambous, Counsel of the Republic, for the respondent.

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Cur. adv. vult.

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

MALACHTOS, J.: The applicant in this recourse is a police sergeant and is posted at the Police Headquarters in Nicosia. The Police Headquarters are divided into four departments namely, A, B, C and D, and each department is sub divided into sections. Each department is headed by a departmental commander who is a senior gazetted officer and each section is headed by a gazetted officer who assists the departmental commander as his staff officer. The applicant is attached to the Building and Welfare section which is the first section of department A. At the material time to these proceedings department A was headed by Chief Supt. Costas Constantinides and as staff officer in charge of the first section of this department was Chief Inspector Costas Socratous. The duties of the applicant in the first section of department A were to assist the staff officer Chief Inspector Socratous together with a police woman who was employed as a typist. On 16/8/72 Chief Inspector Socratous went on sick leave and did not resume his duties ever since up to the time of his death which occurred on the 6th of February, 1973.

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After the death of Chief Inspector Socratous Chief Supt. Iordanous was posted on 9/2/73 in charge of the first section of department A. By letter dated 21st September, 1972, exhibit

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4, addressed to the Deputy Chief of Police—the Chief of Police being absent on leave abroad at the time—through his Divisional Commander, applicant complained of unequal treatment and of his not being promoted to the rank of Sub-Inspector.

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5 It is not in dispute that shortly before the 21/9/72 certain promotions were made in the ranks of the police force and in particular a number of sergeants were promoted to Sub-Inspectors. The Deputy Chief of Police by letter dated 27/9/72, exhibit 5, replied to the above letter of the applicant through
10 his Divisional Commander as follows:

“The contents of application of the sergeant concerned dated 21/9/72 regarding his non promotion during the recent promotions have been noted.

15 2. In the meantime please advise him to try to pass the prescribed examinations for promotion”.

As a result the applicant filed the present recourse claiming the following remedies:

- 20 (a) that the refusal of appointment of the applicant to the post of Sub-Inspector be declared *null* and *void* and of no legal effect whatsoever; and
(b) that the omission of appointing the applicant to the post of acting Sub-Inspector be declared *null* and *void* and that whatever has been omitted should have been performed.

25 The application, as stated therein, is based on the following grounds of law:

- 30 1. The negative decision and/or omission complained of was taken by an inappropriate organ contrary to regulation 11 of the Police (General) Regulations 1958 and section 2 of the Police Law, Cap. 285.
2. The appropriate organ did not in substance exercise its powers;
3. The above decision was taken in contravention of the said Regulation 11 in view of the fact that it was considered necessary the fulfilment of prerequisites not
35 provided by the said regulation.
4. There was a contravention of the said regulations since, in the circumstances of the present case and in view of

the fulfilment of all prerequisites provided by the said regulation, the power provided by this regulation ought to have been exercised in favour of the applicant.

5. There has been unequal treatment of the applicant since the power provided by the said regulation was exercised in favour of other members of the police force under the same circumstances. 5

The opposition, on the other hand, is based on the following grounds of law:

- (a) The applicant has no legitimate interest to file this recourse; 10
- (b) the decision of the respondent was rightly and lawfully taken after considering all facts and circumstances;
- (c) the decision of the respondent was lawfully taken under Regulation 10 of the Police (General) Regulations 1958 and section 8 of the Police Law, Cap. 285; and 15
- (d) Alternatively, the decision of the respondent was lawfully taken under Regulation 11 of the said regulations.

Counsel for applicant argued that after the 16th August, 1972, when Chief Inspector Socratous went on leave his duties were performed by the applicant and this was to the knowledge of the Divisional Commander. In support of this allegation the applicant gave evidence and alleged that after submitting his application he saw the Deputy Chief of Police and told him that in fact he wanted to act during the absence of Chief Inspector Socratous as a Sub-Inspector. He did not ask to be promoted as he did not possess the required qualifications for the post. 20 25

Counsel for applicant submitted that since the Divisional Commander was aware of what the applicant was doing, he had a duty under Regulation 11 of the Police (General) Regulations 1958 to appoint the applicant to act in the rank of Sub-Inspector. Under Regulation 11 it was not necessary for the applicant to possess the required qualifications as in the case of regulation 10. Regulations 10 and 11 of the Police (General) Regulations, 1958 read as follows: 30 35

“ 10. Temporary promotions

(1) A member of the Force who is required to perform the duties of a higher rank may be promoted temporarily to that rank by the Chief of Police:

Provided that –

- 5 (a) a vacancy exists in the rank;
- (b) in the case of Gazetted Officers such promotions are made with the approval of the Council of Ministers (Powers delegated to the Minister of Interior, M.C. decision 768/11.5.61).
- 10 (2) Any service in the temporary rank shall –
- (a) be deemed to be substantive service in that rank when a police officer is appointed permanently to a higher rank and there is no break between temporary and substantive service in the rank;
- 15 (b) be subject to the salary scale and allowances applicable to the higher rank.
- (3) Members of the Force promoted temporarily to a higher rank shall enter the salary scale of the post at the minimum unless the Council of Ministers otherwise directs.
- 20 (4) Pension shall be calculated on the salary of a member's substantive rank and not on the salary of the post to which he is temporarily promoted.
- 25 (5) Where the substantive holder of a rank is temporarily absent on leave or through sickness, the officer appointed to perform the duties of the post will not be temporarily promoted to it, but shall act in the post.
- 30 (6) Members of the Force shall wear the uniform and insignia of the temporary rank.

11. Acting rank

- 35 (1) A member of the Force who is required to perform the duties of a higher rank due to the temporary absence of the holder of that rank, may be appointed to act in the rank by the Divisional or Unit Commander:

Provided that –

- (a) All such appointments are made with the approval of the Chief of Police;
 - (b) notification is sent to Force Headquarters for the purposes of pay and maintaining records. 5
- (2) Any service in the acting rank shall not –
- (a) be deemed as approved service in the higher rank;
 - (b) be subject to allowances applicable to the higher rank. 10
- (3) Members of the Force appointed to acting rank shall receive in addition to their pay an allowance at a rate equal to the difference between their pay and the lowest rate for the higher rank:
- Provided that in the case of Gazetted Officers 15
the provisions of General Orders shall apply.
- (4) No member of the Force shall be appointed to acting rank if the period of absence of the holder is less than fourteen days.
- (5) Constables nominated as acting sergeants may wear 20
two chevrons at all times, but will receive the acting allowance only when required to perform the duties of a sergeant. Members of the Force shall wear the uniform and insignia of the acting rank only when instructed by the Chief of Police to do so". 25

Counsel for applicant also argued that the reply to the applicant's application by the Deputy Chief of Police, *exhibit 5*, amounts to an express refusal to appoint him to act as a Sub-Inspector and, consequently, it was taken by the inappropriate organ as in the present case the appropriate organ was the 30
Divisional Commander and not the Chief of Police.

Finally, he submitted that since in the case of other members of the Police Force, who were required to perform duties of a higher rank they were appointed to act in that rank, in the case of the applicant who was not appointed there has been 35
unequal treatment contrary to Article 28 of the Constitution.

On the other hand, counsel for the respondent argued that it is clear from the application of the applicant to the Deputy Chief of Police *exhibit 4*, that he did not ask for his appointment to act as a Sub-Inspector under Regulation 11 but for his temporary promotion under Regulation 10. So, the reply of the Deputy Chief of Police, *exhibit 5*, does not amount to an act or omission and cannot be the subject of a recourse under Article 146 of the Constitution. In fact, the applicant by this recourse attacks a non existing administrative act. He also argued that the applicant did not satisfy the Court that he was required to perform the duties of a higher rank, duties which he was never required to do and in fact he never performed such duties.

The Divisional Police Commander Chief Supt. Costas Constantinides gave evidence on this point and stated clearly that after 16/8/72 when Chief Inspector Socratous went on leave nobody replaced him and the office came directly under his command pending promotions as there was an idea to fill in the vacancy if Mr. Socratous did not return back. He did not ask the applicant to perform the duties assigned to Chief Inspector Socratous.

The main point for consideration in this recourse is whether the application of the applicant of 21/9/72, *exhibit 4*, amounts to an application for an acting appointment under Regulation 11 or for a temporary promotion under Regulation 10 of the Police (General) Regulations 1958.

The relevant paragraphs of the said application to this issue are paragraphs 4 and 8 which read as follows:

* “ Τὸ ἀνὰ χεῖρας σας παράπουν εἶχον ἐτοιμον ἀπὸ πολλοῦ, διὰ νὰ ὑπευθυμῆσω ὑμᾶς ὅτι ἐκτελῶ χρέη καὶ καθήκοντα ἀξιωματικοῦ λόγῳ τῆς συνεχοῦς ἀσθενείας καὶ κατὰ ἀρκετὰ διαστήματα ἀπουσίας τοῦ Ὑπευθύνου Ἀξιωματικοῦ μὴ δυναμένου οὐδὲ κατ’ ἐλάχιστον νὰ προσφέρῃ, ἀλλὰ θεῖα χάριτι ἐσχάτως, ἐπῆλθεν εἰς ἐπικουρίαν ἐμοῦ ἡ ἀπόφασίς σας νὰ ἀνακοινώσητε τὰς προαγωγὰς ἀναγκαζόμενος οὕτως νὰ λύσω τὴν σιωπὴν μου, καὶ παρουσιαζόμενος ὑποβάλλω ὑμῖν ὅτι οὐδέποτε ὑπῆρξα ὀχληρὸς θεσοθήρας καὶ ὅτι ἀντὶ τῆς ἀμοιβῆς, ἡμείφθην διὰ πλήξεως μόνου.

* An English translation of this text appears at pp. 106-107 *post*.

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Ἐπειδὴ ἡ ζῶη ἡμῶν τῶν εὐσυνειδήτων Ἀστυνομικῶν εἶναι γεμάτη ἀπὸ Κανονισμοῦς, Νόμους καὶ Διατάξεις στὴν ὥρα τοῦ καθήκοντος, στὸ σπῆτι, στὴν ὥρα τῆς ἀναπαύσεως καὶ στὸν ὕπνο μας ἀκόμα, Νόμους ποὺ μιλοῦν γιὰ Δίκαιον καὶ Τιμωρίαν τῆς ἀδικίας, γι' αὐτὸν τὸν λόγον τολμῶ νὰ παραπονεθῶ καὶ νὰ ὑποστηρίξω τὸν ἑαυτὸν μου στὴν ἀδικίαν ποὺ μοῦ γίνεται μὴ ζητώντας οἶκτον ἀπὸ κανένα παρὰ μόνον τὸ δίκαιον διὰ τῆς προαγωγῆς μου εἰς τὸν βαθμὸν τοῦ Προσωρινοῦ Ἀνθυπαστυνόμου συμφώνως τῶν Ἀστυνομικῶν Γενικῶν Κανονισμῶν".

It is abundantly clear from the above paragraphs that the applicant applied for a temporary promotion under Regulation 10 and not for an acting appointment under Regulation 11 and very rightly the Deputy Chief of Police treated his application as such and replied accordingly, since admittedly the applicant did not possess the required qualifications.

Furthermore it is clear from the evidence of Chief Supt. Costas Constantinides that the applicant was never required to perform the duties of Chief Inspector Socratous and in fact never performed duties of a higher rank. Even the applicant himself in giving evidence did not allege that he was ever required by his superiors to perform duties of a higher rank. So, no question of appointment under Regulation 11 or promotion under Regulation 10 ever arose in the present case. Consequently, the allegation of unequal treatment under Article 28 of the Constitution cannot stand as the applicant was never in the same situation with other members of the Police Force who were required to perform duties of a higher rank (see *Nishian Arakian and Others v. The Republic* (1972) 3 C.L.R. 294).

For the reasons stated above this recourse fails.

As regards costs I make no order.

*Application dismissed.
No order as to costs.*

This is an English translation of the Greek text appearing at pp. 105–106 *ante*.

“The complaint which is now in your hands had been prepared a long time ago in order to remind you that I am exercising the powers and duties of an officer due to the continued illness

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5 and absence for long periods of the officer in-charge who cannot offer even the slightest service but by a divine grace there came to my assistance your decision to publish the promotions and I am thus bound to end my silence and appear by submitting that I have never been a troublesome post chaser and instead of being rewarded I was rewarded by being hit only.

10 As the life of us the conscientious Policemen is full of Rules, Laws and Regulations governing our attitude at the time of duty, at home, at rest and even at the time of sleep, laws which speak of Justice and punishment of injustice, for this reason I dare complain and give support to myself because of the injustice that is being done to me not asking from anyone to pity me but only asking for Justice by my temporary promotion to
15 the rank of Sub-Inspector according to the Police General Regulations”.