

1976
Nov. 6

[STAVRINIDES, J.]

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LEFKOS
GEORGHIADES
v.
REPUBLIC
(PUBLIC
SERVICE
COMMISSION)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LEFKOS GEORGHIADES,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 317/74).

Administrative Law—Administrative Act—Revocation—Administrative Act against which a recourse for annulment had been made and rejected by Administrative Court—Can be revoked by the Administration—Refusal of the Public Service Commission to revoke a disciplinary decision on the ground that it had no power to do so because the decision had been upheld by the Court—Said refusal based on an error of law as to the effect of res judicata on the position—Annulled.

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Res judicata—Does not operate so as to impede revocation of administrative acts.

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By a decision taken on April 30, 1969 the Public Service Commission found that during his service as ambassador of the Republic in Moscow the applicant committed certain disciplinary offences and demoted him to the rank of Counsellor or Consul General.

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The applicant challenged this decision by means of a recourse under Article 146.1 of the Constitution. The Court at first instance, revoked the Commission's decision on formal grounds and on appeal by the Commission the Supreme Court allowed the appeal and restored the decision of the Commission.

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On December 31, 1971 the applicant applied to the Commission asking it to revoke its decision. The Commission refused to do so on the ground that "it had no right whatever to take the step of reviewing its decision" because it believed that applicant has exhausted all the latitude available to him in support

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of his allegations which were not accepted by the Supreme Court*.

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Hence the present recourse. Counsel for the applicant contended:

- 5 (a) That the Commission had a discretion to revoke its 1969 decision;
- (b) That its refusal to revoke it was not based on the merits of the matter but on the mistaken view that in the circumstances of this case it had no power of revocation; and that this view was based on an error of law and is liable to review by this Court.
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Held, that as the Commission took the view that it had no power to revoke the original decision because it had been restored by the Supreme Court on appeal and not that it did not see any reason for so doing because no new facts had been placed before it, the *sub judice* decision is based on a misapprehension as to the effect of res judicata on the position; that though respect for res judicata is a very commendable, and indeed an overriding, consideration in an ordered society the true view of the matter is that the doctrine does not operate so as to impede revocation of administrative acts (see Stassinopoulos on the Law of Administrative Acts pp. 413, 414); that neither the disciplinary decision nor the subsequent appellate decision of the Supreme Court stood in the way of revocation of the original decision and, therefore, the Commission's decision was based on an error of Law; and that, accordingly, the subject decision is reviewable by this Court and, being based on an error of Law, must be annulled.

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Sub judice decision annulled.

30 **Recourse.**

Recourse against the refusal of the respondent to revoke its decision to demote the applicant to the rank of Counsellor or Consul General.

Fr. Markides, for the applicant.

35 *L. Loucaides*, Deputy Attorney-General of the Republic, for the respondent.

Cur. adv. vult.

* See the whole text of this decision at pp. 382-383 *post*.

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The following judgment was delivered by:—

STAVRINIDES, J.: The applicant is in the diplomatic service of the Republic. The Public Service Commission having found in disciplinary proceedings against him that during his service as ambassador of the Republic in Moscow he committed certain disciplinary offences, it demoted him to the rank of Counsellor or Consul General. That decision was taken on April 30, 1969 (*exh. 5* to the application). 5

On December 31, 1973, he applied to the Commission in writing (“*exhibit D*”) asking it to revoke its decision. The Commission refused to do so (“*exhibit A*”), and by the instant application it is sought to annul that refusal (hereafter “the subject decision”). 10

The argument for the applicant may be summed up as follows:

- (1) The Commission had a discretion to revoke its 1969 decision (hereafter “the original decision”) 15
- (2) its refusal to revoke it was not based on the merits of the matter but on the mistaken view that in the circumstances of this case it has no power of revocation;
- (3) that view was based on an error of law and is liable to review by this Court. 20

Counsel for the respondent submitted that “In Greece, at any rate, an administrative decision cannot be revoked merely because the administration has changed its view as to its justice or expediency”, adding that by “merely” he meant “in the absence of new facts”; and that no new facts were put before the Commission since the original decision was taken. 25

After the original decision, viz. on December 31, 1973, the applicant applied to the Commission requesting, in substance, the revocation of the original decision and enclosing a copy of a previous application on the same subject that he had submitted to the Council of Ministers on the preceding July 14 and a report made by Mr. Chr. Veniamin, then Director-General of the Ministry of Foreign Affairs, on June 26, 1973. 30

Now what did the Commission say in refusing to revoke the original decision? *Exhibit A* is in these terms: 35

“I have been instructed to refer to your letter dated De-

ember 31, 1973, whereby you apply for review of the decision of the Public Service Commission based on the disciplinary charges and your restoration to your former post, and to inform you that the Public Service Commission, taking into account the fact that:

(a) every opportunity was afforded both to you and your advocates from time to time to put forward any matter in your defence in the course of the proceedings before the Commission relating to the charges preferred against you,

(b) you exercised the right of recourse to the Supreme Court at first instance which only revoked the Commission's decision on formal grounds, and

(c) the Supreme Court as a full Appeal Court, having taken cognizance of the case, allowed an appeal by the Commission and dismissed a cross-appeal on your part, thus affirming the Commission's decision,

believes that you have exhausted all the latitude available to you in support of your allegations, which were not accepted by the Supreme Court and, therefore, the Commission has no right whatever to take the step of reviewing its decision. The Commission therefore decided that it is unable to accede to your request for re-examination of the case".

Counsel for the respondent sought to support the Commission's refusal by saying that the reasons given for it are referable to the circumstances of this particular case and do not imply any general view that the Commission had no power of revocation.

True, (a)-(c) in *exhibit A* are references to the disciplinary proceedings before the Commission and to the subsequent proceedings—both at first instance and on appeal—in the applicant's recourse to this Court. But the Commission, after expressing its view that the applicant "had exhausted all latitude in support of his allegations" concludes that "therefore (it) had no right whatever to take the step of reviewing its decision".

In my view what all this boils down to is that the Commission was saying, in substance, that it had no *power* to revoke the original decision because it had been restored by the Supreme Court on appeal from the first instance decision of the Court—

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not that it did not see any *reason* for so doing because no new facts had been placed before it. Thus the subject decision is based on a misapprehension as to the effect of *res judicata* on the position. Now respect for *res judicata* is a very commendable, and indeed an overriding, consideration in an ordered society. 5
But the true view of the matter is that that doctrine does not operate so as to impede revocation of administrative acts. Stassinopoulos in his Law of Administrative Acts says at pp. 413, 414:

“ On the contrary, the rules of compliance by the administration with the decisions of the Council of State are not inconsistent with voluntary revocation by the administration of an act against which an application for annulment has been made which application has been rejected by a final decision of the Council of State. Such revocation will be judged on its merits with reference to the general principles governing revocation, without the fact that the application for annulment of the act was rejected affecting its legality because such rejection constitutes recognition of the legality of the act but not a command that the act shall remain in force, since revocation even of lawful acts is permitted in certain circumstances”. 10
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As the quotation shows, neither the disciplinary decision nor the subsequent appellate decision of this Court stood in the way of revocation of the original decision and therefore the Commission's refusal was based on an error of law. 25

That being so what is the position? In my judgment the subject decision is reviewable by this Court and, being based on an error of law, must be annulled.

Subject decision annulled. The Commission to pay the applicant £50 costs. 30

Sub judice decision annulled. Order for costs as above.