

1984 September 25

[TRIANTAFYLIDIS, P., SAVVIDES, LORIS, STYLIANIDES, PIKIS, JJ.]

GEORGHIOS MICHAELIDES,

Appellant.

v.

THE REPUBLIC OF CYPRUS, AND/OR
THE PUBLIC SERVICE COMMISSION,

Respondent.

(*Revisional Jurisdiction Appeal No. 341*).

Legitimate interest—Article 146.2 of the Constitution—Acceptance of administrative act with reservations—Does not deprive applicant of legitimate interest to attack it by means of a recourse.

5 *Public Officers—Conditions of service—Offer of appointment stating that appellant “will also be liable to transfer within the Island”—And that his duties will be those provided by the schemes of service attaching to his post—Schemes of service providing that he is liable for transfer to a trade centre abroad—They are part of his conditions of service—Sub judice decision transferring him*
10 *abroad lawfully taken.*

The appellant, who was already in the Government Service, was on the 15th March, 1979 offered appointment to the post of Commercial Assistant 1st Grade in the Ministry of Commerce and Industry. In the offer of appointment it was stated, inter alia, that he will “also be liable to transfer within the Island according to the exigencies of the service” and under the heading “Duties” it was stated that the duties are the usual duties attaching to the post of Commercial Assistant, 1st Grade “as laid down in the approved scheme of service”. The scheme of service provided, inter alia, “that he assists the Commercial Counsellor at anyone of the Trade Centres of the Ministry of Commerce and Industry.”

When the appellant came to know of a proposal by his Head of Department to the Public Service Commission for his transfer

to Cologne he wrote to his Head of Department on the 27th July, 1983 and thanked him for his proposal but at the same time he raised certain matters and requested that they be taken into consideration.

The Public Service Commission after considering the proposal of the Head of Department and appellant's letter decided to transfer appellant to the Trade Centre of Cologne in West Germany. Appellant challenged this decision by means of a recourse in which it was mainly contended that in accordance with his terms of service, on the basis of his appointment, he was subject to transfer only within the Republic. 5 10

The trial Judge dismissed the recourse, having found that the schemes of service, including its part referring to the duties and responsibilities of the officer was made part of his conditions of service; and that it was part of his conditions of service at the time of his appointment that he was liable to service also at Trade Centres abroad. The trial Judge, further, dismissed the preliminary objection raised by counsel for the respondent, that in view of the contents of his above letter of the 27th July 1983, the appellant had lost any legitimate interest having consented unreservedly to the issue of the sub judice administrative act. 15 20

Upon appeal against the dismissal of his recourse the appellant contended that the above findings of the trial Court were wrong and that the trial Court in reaching his conclusion that the decision for the transfer of the appellant was a valid decision in accordance with the law, acted on wrong assumptions of fact and misinterpretation of the scheme of service. 25

Held, (1) that though free and unreserved acceptance of an administrative act deprives the acceptor of his legitimate interest to pursue a recourse against such act the acceptance by the appellant of his transfer to Cologne was not an unconditional one but it was made subject to certain conditions contained therein; and that, therefore, this Court is in agreement with the trial Judge that the acceptance by the appellant of his transfer was not an unreserved acceptance depriving him of his legitimate interest to challenge same. 30 35

(2) That this Court has not been convinced that the trial Judge erred in his conclusion and that his conclusion is fully warranted by the material before him; accordingly the appeal must fail.

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Appeal dismissed.

Cases referred to:

Michaelides v. Republic (1983) 3 C.L.R. 963;

Metaforiki Eteria "Ayios Antonios" v. Republic (1981) 3 C.L.R. 221;

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Neocleous and Others v. Republic (1980) 3 C.L.R. 497;

Aniliades v. Cyprus Telecommunications Authority (1981) 3 C.L.R. 21;

Zambakides v. Republic (1982) 3 C.L.R. 1017;

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Tomboli v. Cyprus Telecommunications Authority (1982) 3 C.L.R. 149;

Andronikou v. Republic (1983) 3 C.L.R. 1280;

Myrianthis v. Republic (1977) 3 C.L.R. 165;

Group of Five Bus Tour Ltd. v. Republic (1983) 3 C.L.R. 793;

Ionides v. Republic (1979) 3 C.L.R. 679;

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Ioannou and Others v. Republic (1983) 3 C.L.R. 150.

Appeal.

25 Appeal against the judgment of a Judge of the Supreme Court of Cyprus (A. Loizou, J.) given on the 29th October, 1983 (Revisional Jurisdiction Case No. 352/83)* whereby appellant's recourse against his transfer from the Ministry of Commerce and Industry to the Cyprus Commercial Centre of Cologne, Germany was dismissed.

A.S. Angelides, for the appellant.

A. Vladimirov, for the respondent.

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Cur. adv. vult.

* Reported in (1983) 3 C.L.R. 963.

TRIANAFYLLIDES P.: The judgment of the Court will be delivered by Mr. Justice Savvides.

SAVVIDES J.: The appellant, by his recourse, challenged the validity of his transfer from the Ministry of Commerce and Industry to the Cyprus Commercial Centre of Cologne, Germany, which was communicated to him by letter dated 16.8.1983. His recourse was heard by a Judge of this Court, sitting in the first instance, and was dismissed. 5

The facts of the case appear in detail in the judgment of the learned trial Judge (see *Michaelides v. The Republic* (1983) 3 C.L.R. 963) and we need not narrate them at length. Such facts are briefly as follows: 10

The appellant who was already in the Government Service was on the 15th March, 1979 offered appointment to the post of Commercial Assistant 1st Grade in the Ministry of Commerce and Industry. In the offer of appointment it was stated, inter alia, that he will "also be liable to transfer within the Island according to the exigencies of the service" and under the heading "Duties" it was stated that the duties are the usual duties attaching to the post of Commercial Assistant, 1st Grade "as laid down in the approved scheme of service". The scheme of service provided, inter alia, "that he assists the Commercial Counsellor at anyone of the Trade Centres of the Ministry of Commerce and Industry_____". 15 20

When the appellant came to know of a proposal by his Head of Department to the Public Service Commission for his transfer to Cologne he wrote to his Head of Department on the 27th July, 1983 and thanked him for his proposal but at the same time he raised certain matters and requested that they be taken into consideration. 25 30

The Public Service Commission after considering the proposal of the Head of Department and appellant's letter decided to transfer appellant to the Trade Centre of Cologne in West Germany and hence his recourse in which it was mainly contended that in accordance with his terms of service, on the basis of his appointment, he was subject to transfer only within the Republic. 35

Counsel for the respondent Commission raised a preliminary objection that in view of the contents of his above letter of the 27th July 1983 the appellant had lost any legitimate interest having consented unreservedly to the issue of the sub judice administrative act.

The learned trial Judge in dealing with the preliminary objection concluded as follows:

“Counsel for the respondent Commission has raised an objection that in view of the contents of his letter of the 27th July (Appendix 3) hereinabove set out, the applicant has lost any legitimate interest having consented unreservedly to the issue to the sub judice administrative act. In support of this proposition I was referred to the case of *“Metaforiki Eteria Ayios Antonios etc., v. The Republic (1981) 3 C.L.R. 221 at p. 235 and the authorities therein cited. No one disagrees with the proposition that there does not exist a legitimate interest in order to attack an administrative act if it is issued on the application or at the request or with the consent of the applicant as well as if there is acceptance of an act which must be in any event unreserved and free and must not have taken place under the pressure of forthcoming injurious consequences for the applicant.*”

In the present case, however, although the tenor of that letter was such as to convey to the respondent Commission the impression of the applicant accepting or at least not objecting to his transfer to Cologne, yet, it was couched in such terms and connected with two conditions that I cannot uphold the submission that this is a case where there was an unreserved acceptance of the administrative act in question which would in the circumstances deprive the applicant of his legitimate interest”.

The principle that free and unreserved acceptance of an administrative act deprives the acceptor of his legitimate interest to pursue a recourse against such act, has been stated and restated time and again by this Court (see in this respect, inter alia, *Metaforiki Eteria “Ayios Antonios” etc. v. The Republic (supra), Neocleous and Others v. The Republic (1980) 3 C.L.R. 497, Aniliades v. The Cyprus Telecommunications Authority (1981)*

3 C.L.R. 21, *Zambakides v. The Republic* (1982) 3 C.L.R. 1017, *Tomboli v. The Cyprus Telecommunications Authority* (1982) 3 C.L.R. 149, *Andronikou v. The Republic* (1983) 3 C.L.R. 1280). Such acceptance may be express or implied (*Myrianthis v. The Republic* (1977) 3 C.L.R. 165, *Group of Five Bus Tour Ltd. v. The Republic* (1983) 3 C.L.R. 793. It is also well established that an acceptance of an administrative act with reservation of rights does not deprive an applicant from his right to challenge such act, and that such reservation is sufficient to preserve applicant's legitimate interest to file a recourse. (see in addition to the above cases, *Ionides v. The Republic* (1979) 3 C.L.R. 679 and *Ioannou & Others v. The Republic* (1983) 3 C.L.R. 150).

Having perused the contents of appellant's letter of the 27th July, 1979, we are satisfied that the acceptance by the appellant of his transfer to Cologne was not an unconditional one but it was made subject to certain conditions contained therein. Therefore, we are in agreement with the learned trial Judge that the acceptance by the appellant of his transfer was not an unreserved acceptance depriving him of his legitimate interest to challenge same.

The learned trial Judge in examining the substance of the recourse found as follows:

"It is true that in the original offer of appointment to the applicant there was attached the cyclostyled document (exhibit 1, red 13) a form of general use with the essential parts filled in with typewriter and which is entitled 'Conditions of service at present attaching to appointment.....' and it contains inter alia under the heading 'Appointment' the words 'He/She will also be liable to transfer within the Island according to the exigencies of the service', which were left intact.

On the other hand under the heading 'Duties' it is stated 'The duties are the usual duties attaching to the post of Commercial Assistant, 1st Grade, in the Ministry of Commerce and Industry as laid down in the approved scheme of service for this post. He/She may be required to perform any other duties which may be assigned to him/her. The officer will be required diligently and faithfully to

perform his/her duties and to act in all respects in accordance with the instructions or directions given to him/her by the Head of his/her Department or other duly authorized officers, devoting thereto the whole of his/her time and attention and without engaging directly or indirectly in, or undertaking any private work'.

Consequently the Scheme of Service, including of course its part referring to the duties and responsibilities of the officer was thus made part of the conditions of service of the applicant.

In the present case among the duties and responsibilities of the applicant are those set out in paragraph (b) of the Scheme of Service which provides that he 'assists the Commercial Counsellor at anyone of the Trade Centres of the Ministry of Commerce and Industry in the execution of his duties'.

There is no doubt,—and the contention of counsel for the respondent Commission to that effect which has in no way been contradicted and in fact is duly supported by the contents of exhibit 2—that Trade Centres function only overseas. Moreover the note which was inserted in the Scheme of Service as published under Notification 1044 in the official Gazette of the 2nd June 1978, earlier referred to in this judgment that 'those appointed will be posted originally one at the Trade Centre Cologne, one at the Trade Centre Dubai and the others at the Ministry of Commerce and Industry, leads one to the conclusion that it was part of the conditions of service of the applicant at the time of his appointment that he was liable to serve also at Trade Centres abroad.

It should be noted that this notification speaks that 'those appointed will be posted originally' which means that subsequently there might be effected changes and transfers from the Ministry to the Trade Centres and vice versa. What might on the face of it appear to be a contradiction and conflict between the Scheme of Service on the basis of which the applicant had applied and the conditions contained in the first paragraph of the document attached to the offer of appointment, is in substance not contradictory

inasmuch as when it says 'he will also be liable to transfer within the island' that does not exclude an overseas posting for the purpose of performing the duties of assisting the Commercial Counsellor at any one of the Trade Centres of the Ministry of Commerce and Industry which the Government of the Republic has or may set up abroad operating as part of our diplomatic missions in other countries. In this way effect is given, as it ought to, to all provisions of the relevant documents". 5

Having reached such conclusion, the learned trial Judge dismissed the recourse on its substance. 10

Appellant's counsel, in support of his appeal, contended that the above findings of the trial Court were wrong and that the trial Court in reaching his conclusion that the decision for the transfer of the appellant was a valid decision in accordance with the law, acted on wrong assumptions of fact and misinterpretation of the scheme of service. 15

Having carefully considered the findings of the learned trial Judge, in the light of all the material before us, we have not been convinced that the learned trial Judge erred in his conclusion as above and that his conclusion is fully warranted by the material before him. It is for this reason that we found it unnecessary to call upon counsel for the respondent to address us in reply to appellant's counsel address. 20

A question which has not been determined by the learned trial Judge and which was raised by counsel for appellant in the course of the hearing of this appeal is whether the respondent Commission carried out a due inquiry in appellant's case and whether in the exercise of its discretionary power took into consideration and gave due weight to the reservation of the appellant in his letter of the 27th July, 1983. 25 30

We have carefully considered the argument advanced by counsel for appellant in support of such contention, as well as that of counsel for respondent against it. We find ourselves unable to accept the contentions of counsel for appellant on this issue. It is clear from the material before us that the respondent Commission carried out a due inquiry in this case. Appellant's letter of the 27th July, 1983, to the Head of his 35

Department after he came to know about the proposal to the respondent Commission for his transfer to Cologne, by which he manifested his intention to accept such transfer with appreciation and thanks and in which he set out his personal and family circumstances and expressed a hopeful expectation that such transfer would entail a promotion, was before the Public Service Commission when considering the proposal of the Ministry for his transfer to Cologne.

That the matters raised by the appellant in such letter were duly considered by the respondent Commission appears clearly in the minutes of its meeting of the 12th August, 1983, at which the sub judice decision was taken, in which extensive reference is made to them and also in the letter sent by the respondent Commission to the appellant on the 16th August, 1983, paragraph 3 of which reads as follows:

“With regard to the safeguarding of the Civil Service interests of your wife, as well as the question of your promotion to the post of Trade Counsellor, raised by your letter dated 27.7.1983 addressed to the Director-General of the Ministry of Commerce and Industry, you are informed that the first point does not fall within the competence of the Public Service Commission and that the second one is irrelevant to your present transfer”.

In the result this appeal fails and is hereby dismissed but in the circumstances we make no order for costs.

*Appeal dismissed with no order
as to costs.*