

1985 July 5

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

LOUCAS SAVVIDES,

Applicant,

v.

THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 214/81).

5 *Administrative Law—Administrative act—Dismissal from service of a Public Officer as a disciplinary punishment for the offence of absence from duty without leave—Retrospective effect of dismissal as from date since when the applicant was absent without leave—Recourse challenging only the retrospective effect of the dismissal—Legitimate interest—Whether applicant has a legitimate interest to present recourse.*

10 *Public Officers—Not entitled to payment of any salary for a period during which they have neither performed their duties nor were they entitled to any earned leave or sick leave—Dictum of Josephides, J. in The Republic v. Mozoras (1970) 3 C.L.R. 210 at pp. 222-223 adopted and followed.*

15 *Administrative Law—General principles—The principle of non-retrospectivity of an administrative act—Exceptions.*

Law 39/1981—It relates to premature or early retirement—Not to cases of dismissal from service.

20 The applicant, who was at the time a Topographer/Irrigation Engineer in the Water Development Department, obtained leave of absence from his service for a period ending 4.3.1980. The applicant did not return to his post on the expiration of his leave and as a result disciplinary

proceedings were instituted against him. The applicant pleaded guilty through counsel appearing for him. On the 28.3.1981 the Public Service Commission dismissed the applicant from the service as from 5.3.1980, the date since when he was absent without leave.

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As a result the present recourse was filed. The applicant does not challenge the decision to dismiss him but only that part of it by which he was dismissed retrospectively.

Held, dismissing the recourse (1) As it is not possible for a public officer to be entitled to the payment of any salary for a period during which he has neither performed his service nor was he entitled to any earned leave or sick leave, especially so in the circumstances of this case where the applicant voluntarily has decided to absent himself without leave, the annulment of the retrospective effect of his dismissal will not help the applicant. The applicant might have had a moral interest if he had also challenged the act of his dismissal. The retrospective effect of the decision alone, having regard to the circumstances of the case, had no effect on the applicant distinct from the effect of his dismissal. In view of the above the applicant has no legitimate interest to pursue this recourse.

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Held, further, on the assumption that the applicant had a legitimate interest to pursue this recourse, the sub judice decision, in as far as it gives retrospective effect to the dismissal of the applicant, is not correct. It is a basic and well established principle of Administrative Law that administrative acts cannot, as a rule, be given retrospective effect. To this rule there are certain exceptions*. The case law shows that the dismissal of a public officer cannot have retrospective effect. Although the circumstances of this case are special and peculiar, the Court is not entirely satisfied that this is a proper case justifying a departure from the general principle.

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Held, further that Law 39/81 cannot have any bearing on the present case as it was enacted after the sub judice

* See p. 1755 post.

decision and in any event relates to premature or early retirement and not to cases of dismissal from service.

Recourse dismissed.

No order as to costs.

5 Cases referred to:

Morsis v. The Republic (1965) 3 C.L.R. 1;

Republic v. Mozoras (1970) 3 C.L.R. 210;

HadjiGeorghiou v. The Republic (1968) 3 C.L.R. 326.

Recourse.

- 10 Recourse against that part of the decision of the respondent by virtue of which the applicant was dismissed from the public service retrospectively as from the 5th March, 1980.

N. Clerides, for the applicant.

- 15 *A. Papasavvas*, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

- 20 L. LOIZOU J. read the following judgment. The applicant by this recourse challenges the validity of that part of the decision of the respondent communicated to him on or about the 8th April, 1981, by letter dated 3rd April, 1981, by which he was dismissed from the service retrospectively as from the 5th March, 1980, and prays for a declaration that such decision be declared null and void and of no
25 legal effect whatsoever in so far as it was made retrospectively and that his dismissal should have been made with effect from the 3rd April, 1981.

- 30 The applicant was, at the relevant time, a Topographer/Irrigation Engineer in the Water Development Department, where he served until the 4th March, 1980.

- 35 Some time in 1979 the applicant was offered, through the International Bank, a post in Nigeria for a period of three years for the purpose of assisting the Government of Nigeria in the implementation of a large scale agricultural development project. The Director-General of the Ministry

of Agriculture and Natural Resources did not give his consent for the release of the applicant on leave without pay on the ground that his services were required in Cyprus.

The applicant applied by letter dated 14th December, 1979, to the Director-General of the said Ministry for re-consideration of his decision. On the 19th December, 1979, he applied for his earned leave, which was for a period ending on the 4th March, 1980, which was granted to him. He thereupon proceeded to Nigeria to take up his new employment. By letter dated 1st January, 1980, the applicant was informed that the matter had been reconsidered but his application was not approved. Applicant did not return to his post on the expiration of his leave and as a result he was informed by letter dated 8th March, 1980, that if he does not return and resume his duties the matter will be reported to the appropriate authority, for its decision.

As applicant did not in fact return to his post, disciplinary proceedings were instituted against him for the offence of being absent from duty without leave which led to the decision of the respondent Public Service Commission, dated 28th March, 1981, by which he was dismissed from the service, after he had pleaded guilty to the offence through counsel appearing for him in those proceedings, as from the 5th March, 1980, the date since when he was absent without leave. This decision was communicated to applicant by letter dated 3rd April, 1981 (exhibit 1), and was received by him on or about the 8th April, 1981.

As a result the present recourse was filed.

The applicant does not challenge the decision to dismiss him but only that part of it by which he was dismissed retrospectively.

In the course of his address learned counsel for applicant referred to the case of *Morsis v. The Republic* (1965) 3 C.L.R. 1 and also to certain Greek authorities and cases of the Greek Council of State and submitted that it is a principle of administrative law that administrative acts cannot have a retrospective effect unless they fall within the recognized exceptions to the rule which is not the case

here. He also argued that the retrospectivity of the sub ju-
dice decision deprived the applicant of the rights and be-
nefits that he would otherwise have had under Law 39 of
1981. Another argument advanced by him based on dis-
5 crimination was later abandoned.

Counsel for the repondent, on the other hand, referred
to an opinion from the Office of the Attorney-General,
dated the 14th January, 1981, and signed by the Deputy
10 Attorney-General of the Republic (exhibit 2) given to the
Chairman of the respondent Commission in a case similar
to this on the basis of which the respondents acted in the pre-
sent case. Counsel argued, adopting such opinion, that the
non-retrospectivity rule can be dispensed with in cases
15 where its application would cause an obstruction to the
smooth functioning of public services or result in unreason-
able consequences which, as he alleged, is the case here.
With reference to Law 39/81 counsel argued that it is irre-
levant to this case as it was not applicable. He lastly ar-
20 gued that the applicant has no legitimate interest to pur-
sue this recourse.

I propose to deal with the issue of legitimate interest
first. Counsel for applicant argued in this respect that if
applicant was not dismissed retrospectively he would have
25 been entitled to his salary up to the 8th April, 1981, the
date on which the sub judice decision was communicated
to him, since there was justification for his absence with-
out leave and in any event he was punished for that. This
was disputed by counsel for the respondent who maintained
30 that the applicant would not have been entitled to any
salary.

Counsel, however, did not refer to any provision of any
law nor did he otherwise indicate how the applicant would
have been entitled to his salary, but for the retrospective
effect of the decision. To my mind it is not possible for
35 a public officer to be entitled to the payment of any salary
for a period during which he has neither performed his
duties nor was he entitled to any earned leave or sick
leave especially so in the circumstances of this case where
the applicant voluntarily, for reasons of his own, has de-
40 cided to absent himself without leave. In the case of *The*

Republic v. Mozoras (1970) 3 C.L.R. 210, it was said at pp. 222-223, by Josephides, J. that:

“Finally, I would observe that, although the Public Service Commission in the present case wrongly gave retrospective effect to its decision to dismiss the respondent, the latter incapacitated himself from attending his office and performing his duties (which is a sine qua non for the payment of the salary to a public officer) when he was convicted of the offence of official corruption and imprisoned by virtue of a judgment of a competent Court.”

Although the above was clearly obiter in that case I fully agree with it and I find as a result that the applicant would not have been entitled to be paid any emoluments during the period in question even if the sub judice decision had no retrospective effect.

In the Conclusions from the Case Law of the Greek Council of State (1929-1959) it is stated, at p. 260(e) that there is no legitimate interest if the annulment of the act in question will not benefit the applicant. The same view is also adopted by Dactoglou “General Administrative Law”, vol. C, p. 228, where it is stated that an applicant has no legitimate interest in cases where the matters in issue are only of theoretical significance, that is, where, even if the claim of the applicant is accepted, the interest which he is relying on cannot be satisfied, or his position will not be improved.

In the circumstances of the present case, I fail to see how the annulment of the retrospective effect of the decision will help the applicant. There has been no indication that any other material interest of the applicant is affected. With regard to the moral aspect of the legitimate interest counsel for applicant did not explain what the moral interest of the applicant is in the present case. In my view he might have had such interest if he was also challenging the act of his dismissal, which is not the case. It seems to me that the retrospective effect of the decision alone, having regard to the circumstances of this case, had no effect on the applicant, adverse or otherwise, distinct from the effect of his dismissal as such.

In the light of the above I find that the applicant has no legitimate interest to pursue this recourse.

I propose, nevertheless, to deal briefly with the substance of the case on the assumption that the applicant had
5 a legitimate interest.

It is a basic and well established principle of Administrative Law that administrative acts cannot, as a rule, be given retrospective effect. To this general rule there are, however, certain exceptions. Such exceptions, as stated
10 in the Conclusions from the Case Law of the Greek Council of State (1929-1959) pp. 197-198, Kyriakopoulos on Greek Administrative Law, 8th ed., vol. 11, pp. 400-401 and Stassinopoulos on the Law of Administrative Acts (1951) pp. 370-373 include the following:

- 15 (a) When there is specific legislative provision to the contrary.
- (b) Where the administrative act is issued in the course of the execution of a law having retrospective effect.
- 20 (c) In the case of an act issued in compliance with a judgment of the Court.
- (d) Upon the annulment by the Court of an administrative act for formal reasons such as lack of due reasoning etc.
- 25 (e) If such retrospectivity is necessitated by the very nature of the act.
- (f) In the case of an act revoking a previous illegal one.

The legality of the dismissal of a public officer with retrospective effect has been raised and considered by this
30 Court in the cases of *Morsis v. The Republic* (1965) 3 C.L.R. 1; *HadjiGeorghiou v. The Republic* (1968) 3 C.L.R. 326; and in the Full Bench case of *The Republic v. Mozoras* (1970) 3 C.L.R. 210.

It was held by the Court in the above cases, where the
35 principle of non-retrospectivity of administrative acts as well as its exceptions, as they evolved by the Case Law in

both Greece and France were considered, that the dismissal of a public officer cannot have retrospective effect but, it being an individual administrative act, becomes effective as from the date of its communication to him.

Thus, in the case of *The Republic v. Mozoras* (supra) it was held, at pp. 219-221 that: 5

“The canon that administrative acts or decisions cannot, in the absence of legislative authorization for the purpose, be given retrospective effect is a cardinal one, one of the most long-standing and firmly entrenched rules of public law; and the exceptions there- 10
to have come to be well defined over the years (see, inter alia, Conclusions from the Decisions of the Greek Council of State 1929-1959 p. 197; *Traité de Contentieux Administratif* by Auby and Drago (1962) Vol. 15
III, p. 18; *Odent on Contentieux Administratif* (1966) p. 1214; and our own case of *Morsis and The Republic* (1965) 3 C.L.R. 1).

At the time when the Commission decided to dismiss the respondent retrospectively, as from the date 20
when he went to prison, there did not exist any legislative authorization entitling it to do so, nor, in my view can the present case, in the light of all its material consideration, be treated as properly being with- 25
in any one of the various categories of exception to the said rule against retrospectivity.

Counsel for the appellant has tried to support the retrospective dismissal of the respondent by citing a passage by Odent (supra, at p. 1218) to the effect 30
that the case-law has recognized, in relation to certain matters, that the nature of things entails the retrospectivity of administrative decisions; and he has placed reliance on two cases—referred to by the learned author in this connection—which were decided 35
by the French Council of State, viz. the cases of *Dubut* (24th October, 1958) and *Jayet* (22nd December, 1958).

Having perused these cases, as well as the cases of *de Grimal* (18th May, 1956) *Plas* (7th February, 1962) 40
and *Meriot* (24th October, 1962), which were decided,

also, by the French Council of State, I am inclined to the view that in each such case the retrospective effect of the relevant administrative action was based on the particular circumstances of the case or on specific legislative provisions or on a combination of both, and that such cases are distinguishable from the present one, where, in the light of the history of its events and of its nature, it was not proper for the Commission to give retrospective effect to its decision regarding the dismissal of the respondent;"

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"In taking the view that the Commission should not have dismissed the respondent with retrospective effect, I am not excluding the possibility of such a dismissal in a proper case, which would appear to be duly covered by precedent to be found in the aforementioned French, or any other, case law; but, I should perhaps point out, in this connection, that, in administrative law, judicial precedents, though undoubtedly of great value as laying down general principles of law, may on occasion have to be departed from, in order to do right in the context of the particular circumstances of an individual case (see Stassinopoulos, supra, p.129; also, Dendias on Administrative Law, 5th ed. vol. A, p.68); it would, anyhow, be highly desirable if our Legislature were to regulate by specific provision in Law 33/67, or elsewhere, the extent to which retrospectivity may be given to dismissals of public officers for disciplinary offences."

Although the circumstances of the present case are special and peculiar I am not entirely satisfied that this is a proper case justifying departure from the general principle and the conclusion reached in the above cited cases which, as a result, I propose to follow.

I, therefore, find that the sub judice decision, in as far as it gives retrospective effect to the dismissal of the applicant is not correct and that the proper date of the effective-

ness of the dismissal should have been the 8th April, 1981, the date of its communication to the applicant.

In view, however, of my finding that the applicant has no legitimate interest to pursue this recourse, the decision cannot be annulled. 5

With regard to the other argument of counsel for the applicant, concerning Law 39/81, I find no substance in it since such Law was enacted on the 17th July, 1981, that is after the sub judice decision was communicated to the applicant and it would not, therefore, have any bearing on the present case, even if the sub judice decision did not have retrospective effect. And, in any case, this law relates to premature or early retirement and not to cases of dismissal from the service. 10

In the result this recourse fails for lack of legitimate interest on the part of the applicant and is hereby dismissed. 15

Recourse dismissed.

No order as to costs.