

1985 April 9

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

KYRIACOS ISAIAS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondents.

(Case No. 581/84).

Public Officers—Transfer—Judicial control—Principles applicable—Evaluation of the needs of the service and the choice of means to satisfy them—Including transfers of personnel—Fall within the exclusive competence of the Administration—Not in themselves liable to review—Personal and family circumstances—Cannot be allowed to override an officer's commitment to the service.

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The applicant, a Welfare Officer 3rd Grade, challenged his transfer from Paphos to Larnaca on the following grounds:

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- (a) Improper exercise of the power to transfer, invoking its use for a purpose other than the needs of the service, and,
- (b) inadequacy of the inquiry relevant to his personal circumstances and those of fellow-employees. This ground was bound up with allegations of discriminatory treatment.

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Held, that on the evidence before this Court, which is accepted, the recommendation of the transfer of the applicant was solely made for the purpose of satisfying the needs of the service as bona fide perceived and evaluated by the Director of the Department; that the respondents

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made a thorough inquiry into the needs of the service, the means of satisfying them, and the personal and family circumstances of the applicant; that their evaluation of the needs of the service, choice of the means to satisfy them, including the transfer of personnel are matters falling within the exclusive competence of the administration, not in themselves subject to review; and that, therefore, the recourse must fail.

Per curiam:

Neither personal nor family circumstances can be allowed to override, as the Public Service Commission observed, an officer's commitment to the service. On assuming office, every officer binds himself to dedicate his services to the civil service and through it to the public. It is an enduring commitment that lasts to the end of his service. The needs of the service are the foremost consideration in the positioning and transfer of personnel.

Application dismissed.

Cases referred to:

- Sentonaris v. Greek Communal Chamber*, 1964 C.L.R. 300;
Vafeadis v. Republic, 1964 C.L.R. 454;
Pierides v. Republic (1969) 3 C.L.R. 274;
Lazarou v. Republic (1973) 3 C.L.R. 82;
Carayiannis v. Republic (1980) 3 C.L.R. 39.

25 Recourse.

Recourse against the decision of the respondents to transfer applicant from Paphos to Larnaca.

A. S. Angelides, for the applicant.

P. Hadjidemetriou, for the respondents.

30 *Cur. adv. vult.*

PIKIS J. read the following judgment. Appreciation of the needs of the Public Service and departments of it and, choice of the means to satisfy them, including the transfer

of personnel, are matters falling within the exclusive competence of the Administration, not in themselves subject to review. A presumption operates that transfers of public officers are effected in the interest of the service. The above principle of administrative Law is firmly established on authority ¹ and no need arises to debate its juridical origin. It is advisable, however, to stress there are strong practical considerations too, justifying its adoption. Inevitably, transfers are made in the context of evaluation of the wider needs of a branch of the service. Review of such evaluation would require the Court in every case to examine how each branch of the department is staffed, virtually an impossible task, and one that would, in effect, render the Courts the overseers of administrative action; whereas, their role is confined to the scrutiny of the legality of administrative action. Examination of the needs of the service on such wideranging basis, would deprive the Administration of the flexibility necessary to respond to the ever-changing needs of the service.

But, like every power, the transfer of officers must be exercised bona fide for the purpose it is given, namely, satisfaction of the needs of the service. If the power is invoked for an ulterior purpose or exceeded by making transfer where none is possible, it can be struck down as illegal. Moreover the exercise of the power must be preceded by the necessary inquiry into the facts relevant to its exercise and, that includes, in the case of transfers, examination of the personal (including family) needs of the officer under transfer. ² As in every case the Public Service Commission is under duty to heed the provisions of Article 28 and ensure equality before the Administration.

The introduction made above is necessary because of the nature of the challenge mounted by the applicant, a Welfare Officer 3rd Grade, against his transfer from Paphos to

¹ See, inter alia, Stavros Sentonaris v. The Greek Communal Chamber through the Director of Greek Education, 1964 C.L.R. 300; Costas Vafeadis v. The Republic of Cyprus, through the Public Service Commission, 1964 C.L.R. 454; Nicos Pierides v. The Republic (1969) 3 C.L.R. 274; Conclusions from the Jurisprudence of the Greek Council of State 1929-59, p. 340; Kyriacopoulos—Greek Administrative Law, 1962, Vol. C' p. 312.

² See inter alia, Sofoclis Lazarou v. Republic (1973) 3 C.L.R. 82; Carayiannis v. The Republic (1980) 3 C.L.R. 39.

Larnaca and in order to appreciate his complaints in correct perspective. The main grounds upon which his transfer is challenged, are-

- 5 (a) Improper exercise of the power to transfer, invoking its use for a purpose other than the needs of the service, and,
- (b) inadequacy of the inquiry relevant to his personal circumstances and those of fellow—employees. This ground is bound up with allegations of discriminatory treatment.
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Respecting the motives of the Administration, the contention is that the transfer was a disciplinary measure in disguise, intended to prevent or discourage the establishment of a nursery station by his wife, or minimise, on account of his absence from Paphos, his involvement in the venture. The rashness with which the transfer was effected—so it is alleged—is in itself indicative of the motives of his superiors, the Authority that recommended the transfer, viz., the Director of the Department of Social Welfare Services.

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In oral testimony before me, Mr. Konis, the Director, refuted every suggestion that the recommendation for transfer was made for any reason other than satisfaction of the needs of the service, or that the recommendation had any punitive character. Moreover, he disputed the allegation that no forewarning was given to the applicant of the intention to recommend his transfer. Months before, he explained, he brought this possibility to the notice of the applicant and explained to him the reasons that dictated it—the need for the proper manning of the welfare office at Larnaca. To the like effect, is the evidence of Mr. Roussos who deputised for Mr. Konis for a time and was himself involved in supporting the recommendation for transfer and affirming the need for effecting it. No evidence was adduced on the part of the applicant to contradict or controvert the testimony of the aforementioned officers. I accept their testimony and find the recommendation for the transfer of the applicant was solely made for the purpose of satisfying the needs of the service as bona fide perceived and evaluated by the Director and the depart-

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ment. I dismiss allegations made to the contrary and the contention that applicant was not forewarned about his transfer. It emerges from their evidence that not only he was given advance notice but took pains to explain to him why his transfer was necessary in the interests of the service. 5

Examination of the documentary evidence before me, indicates the Public Service Commission made every effort to inquire into the personal and family circumstances of the applicant and validity of his complaints about discriminatory treatment. Moreover, they inquired into the evaluation of the Welfare Department of the proposed needs of the department in order to acquaint themselves of how best they should be satisfied. In fact, one can say their inquiry was painstaking, designed to elicit every fact relevant to the exercise of their discretionary powers. Very properly, they ignored a comment of M. Roussos as to the likelihood of applicant's interest in the service being diminished on account of the establishment of the nursery station of his wife. In the end, I can fairly conclude the respondents made a thorough inquiry into the needs of the service, the means of satisfying them, and the personal and family circumstances of the applicant. Their decision cannot be faulted either for abuse or excess of power. On the other hand, their evaluation of the needs of the service cannot, for the reasons explained at the outset, be questioned once made within the proper framework of their powers. 10
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In his letter of 4th June, 1984¹, explaining the reasons for opposing his transfer, applicant stresses that the basic reason for opposing the transfer is the establishment of a nursery station by his wife and the economic repercussions likely to befall the family on his transfer from Paphos. I sympathize with his problems and those of every member of the service trying to make ends meet. On the other hand, neither personal nor family circumstances can be allowed to override, as the Public Service Commission observed, an officer's commitment to the service. On assuming office, every officer binds himself to dedicate his 30
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¹ Appendix 5 to the Opposition.

services to the civil service and through it to the public. It is an enduring commitment that lasts to the end of his service. The needs of the service are the foremost consideration in the positioning and transfer of personnel.

- 5 For the reasons given above, the recourse fails. It is dismissed. Let there be no order as to costs.

Recourse dismissed.

No order as to costs.