

1986 December 29

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

LYSSANDROS DEMETRIOU.

*Applicant.*

v.

- THE REPUBLIC OF CYPRUS, THROUGH
1. THE PUBLIC SERVICE COMMISSION,
  2. THE DIRECTOR OF THE DEPARTMENT OF LAND AND SURVEYS.

*Respondents.*

(Case No. 1048/85).

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*Public Officers—Transfers—Officer holding post on secondment—Cannot be considered at par with permanent holders—In the circumstances rightly excluded from list of those who could be transferred.*

*Public Officers—Transfers—Due inquiry—Request by Commission for full particulars of those who “could” be transferred—Omission to include an officer in the list given to the Commission in compliance with such request—The omission is neither the fault of the Commission nor does it amount to lack of due inquiry—In the circumstances reasonably open to the Head of the Department to omit such officer from the list—The word “could” indicates that the Head of the Department was given a discretion in the matter—In any event omission did not lead to material misconception of fact.*

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*Constitutional Law —Equality —Constitution, Article 28—Reasonable distinctions and differentiations.*

On 12.10.85 the Director of the Department of Lands and Surveys submitted a proposal for the transfer of the

applicant, a Senior Surveyor in the said Department from Nicosia to Limassol. The applicant objected. The Commission considered the objection and as a result decided to request the Director to submit to the Commission full particulars of all Senior Surveyors who "could" be transferred from Nicosia to Limassol.

The Director complied with the request, but in the list, which he submitted, he did not include officer A. Pantazis, who almost had no transfers from Nicosia. The reason for not including Pantazis was the special circumstances of his case, namely that his promotion to the post of Senior Surveyor had been annulled by this Court and an appeal was pending before the Full Bench of this Court. At the relevant time Pantazis was serving on secondment to the permanent post of Senior Surveyor.

The respondent Commission finally decided to transfer the applicant as proposed. Hence the present recourse. The applicant complained of lack of due inquiry in that Pantazis had not been included in the list and of unequal treatment in that whereas the Commission made a comparison between officers Kanaris and Kamas, it failed to make such comparison as regards the applicant.

*Held, dismissing the recourse:* (1) The Commission carried out a due inquiry by requesting full particulars of "the service of all Senior Surveyors who could be transferred from Nicosia to Limassol." If any such officer was not included by the Director it is neither a fault of the Commission nor does it amount to lack of due inquiry.

(2) The post of officer Pantazis was very much in controversy and in any event, being on secondment, he could not be considered at par with Senior Surveyors, as his substantive post was still that of a Surveyor 1st Grade. In the circumstances it was reasonably open to the Director to exclude him from the list. Furthermore, the word "could" in the relevant request of the Commission gave the Director a discretion in the matter. Obviously Pantazis "could" not be considered for transfer.

(3) Furthermore, the non inclusion of Pantazis in the

list cannot in any event be considered a misconception material enough to justify annulment of the sub judice act.

(4) There has been no equal treatment because of reasonable distinctions and differentiations existing between officers Kanaris and Kammas and the particular circumstances surrounding the case of each one of them. 5

*Recourse dismissed.*  
*No order as to costs.*

Cases referred to:

*Republic v. Koufettas* (1985) 3 C.L.R. 1950; 10  
*Efstathios Kyriakou and Others v. The Republic* (1970)  
3 C.L.R. 106.

**Recourse.**

Recourse against the decision of the respondent No. 1 to transfer applicant from Nicosia to Limassol. 15

*A. S. Angelides*, for the applicant.

*Cl. Theodoulou (Mrs.)*, Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

A. LOIZOU J. read the following judgment. The applicant by the present recourse seeks the following reliefs: 20

1. Declaration of the Court that the decision of the respondent 1, to transfer the applicant from Nicosia to Limassol is null and void and of no legal effect whatsoever.

2. Declaration of the Court that the omission and/or refusal of the respondents to consider and/or accept the objection of the applicant against his transfer to Limassol is illegal, null and void. 25

The applicant is a Senior Surveyor at the Department of Lands and Surveys, where he has been serving since 1958. 30

On the 12th October, 1985, the Director of the Department of Lands and Surveys submitted a proposal for the

transfer of the applicant to the Survey Office in Limassol as from the 1st November 1985. The applicant objected to such transfer by letter dated 20th September 1985. The Public Service Commission considered such objections on the 18th October 1985, and decided as a result to ask the Director of the Department of Lands and Surveys for full particulars as regards all Senior Surveyors who could be transferred from Nicosia to Limassol, and details of their service.

Such particulars, as requested, were submitted to the respondent Commission by letter of the Director dated 12th November, 1985, in respect of the applicant, Senior Surveyor Andreas Kamas whose transfer to Limassol had also been proposed and five other Senior Surveyors, namely Iacovos Lakerides, Georghios Tsianakkas, Andreas Hadji-Georghiou, Andreas Kanaris and Constantinos Hepis.

The respondent Commission considered the requirements for manning the Limassol office, the places where the aforesaid officers had served in the past and the representations of such officers and decided to transfer the applicant from Nicosia to Limassol in the interest of the service, with effect as from 16th December, 1985.

The respondent Commission considered as regards Andreas Kamas that out of a total of twenty-three years in the public service he had served outside Nicosia for about ten and half years and that his last transfer to Limassol was from 4th August 1975 to 31st July 1983, whereas officer A. Kanaris had served out of Nicosia only a total of four years and nine months out of twenty-nine years in the public service and that he had been serving in Nicosia continuously since 1962 without any transfer. The proposal for his transfer was therefore turned down.

The Commission further considered that it is up to the Director of the Department to submit to the Commission a new proposal for the transfer of another employee, if he still considered necessary a transfer of the second Senior Surveyor to Limassol.

On the 12th December 1985, the applicant's lawyer wrote to the respondent Commission requesting that the

transfer be postponed in view of the short notice given to his client. The respondent Commission having considered that such request was justified, decided that the transfer in question be with effect as from 30th December 1985, instead of as from 16th December 1985, as originally decided. 5

As a result, the applicant filed the present recourse wherein he argues that the Director by his letter dated 12th November 1985, failed to give all the relevant facts and full particulars which lead the respondent Commission to reach the sub judice decision without due inquiry and under a misconception of fact. It was argued that the Director failed to give particulars of all the officers holding the post of Senior Surveyor, as requested, having omitted to include officer Alexandros Pantazis, who almost had no transfers outside Nicosia. He also failed, it was argued, to give details of the fact that applicant had been travelling to other towns while posted in Nicosia. 10  
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And finally it was argued whereas a comparison was made between officers Kammass and Kanaris, yet no such comparison was made as regards the applicant who has thus been subjected to unequal treatment. 20

As put forward by the respondents with whose contentions I agree, there was no lack of due inquiry on the part of the respondent Commission. To the contrary it carried out a due inquiry by requesting full particulars of "the service of all the Senior Surveyors who could be transferred from Nicosia to Limassol". If any such officer was not included by the Director of the Department, for any reason, is neither any fault of the respondent Commission, nor does it amount to lack of due inquiry. 25  
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As explained by the respondents, officer Alexandros Pantazis had not been included in such list because of the special circumstances surrounding his case. Pantazis had been promoted on the 1st January 1978 to the permanent (Dev.) post of Senior Surveyor from the temporary (Dev.) post of Senior Surveyor, to which he was seconded from the post of Surveyor 1st Grade on the 15th November 1976. There- 35

after he had been promoted to Land Officer 2nd Grade on the 15th May, 1979, and to Land Officer 1st Grade on the 1st December 1981. On the 21st December 1983, his promotion to the Permanent (Dev.) Post of Senior Surveyor was  
5 annulled by the Court as a result of a recourse against such promotion of his, in consequence of which he reverted back to the position he held prior to his promotion on the 1st January 1978 to the permanent (Dev.) post of Senior Surveyor. Such Court decision had however been appealed  
10 against and the decision of the Full Bench in relation thereto was pending.

Whatever the consequence of the decision of the Court, his post was very much in controversy and needless to say being on secondment he could not be considered at par  
15 with the rest of the officers who held substantive posts of Senior Surveyors, secondment being according to law of a temporary nature and of an undeterminable duration, his substantive status remaining at all times the same, that in the present case of Surveyor 1st Grade and such secondment of his could be terminated at any time and he would  
20 automatically revert to the substantive post he held. (See *Republic v. Koufettas* (1985) 3 C.L.R. 1950 at pp. 1960 - 1961.

In the circumstances I find that it was reasonably  
25 open to the Director not to include Pantazis whose position was controversial, in view of the special circumstances surrounding his case and the lack of certainty as to whether he would remain at that post due to the pending outcome of the appeal. In any event, the wording of  
30 the request of the Commission was clear and it gave the Director the discretion to exclude therefrom those officers whose position was debatable or uncertain. The respondent Commission asked the Director to inform them of the service of all the Senior Surveyors who "could" be transferred. I stress the word "could" in the context in which it  
35 is used here and obviously this officer "could" not, in the circumstances and in the light of the entanglement in litigation, be considered for transfer.

Furthermore, the respondent Commission had before it  
40 all relevant facts concerning all the officers eligible for transfer, as regards their service, personal circumstances

etc., and it cannot therefore be said that the sub judge decision was reached under, any material misconception, because the non inclusion of Pantazis in the list cannot be regarded as a misconception material enough to justify an annulment of the sub judge decision. See *Efstathios Kyriakou and Others v. The Republic* (1970) 3 C.L.R. 106 at p. 113. 5

I would also find that no question of unequal treatment arises as between the applicant and officer Kammas, as alleged, because of the reasonable distinctions and differentiations existing between the two officers and the particular circumstances surrounding the case of each one of them. 10

In the circumstances I have come to the conclusion that the sub judge decision was reasonably open to the respondents, it was reached after a due inquiry and is duly reasoned. No misconception of fact exists and there is no discrimination. 15

In the result and for the reasons stated above this recourse fails and is hereby dismissed, but in the circumstances there will be no order as to costs. 20

*Recourse dismissed.*

*No order as to costs.*