

1986 December 6

[DEMETRIADES. J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ANDREAS Z. GEORGHIOU AND OTHERS.

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Cases Nos. 111/81, 143/81).

*Legitimate interest—Public Service—Change of title of post—
No adverse financial repercussions for holders of post and
no substantial change in the duties—The holders of such
post do not possess a legitimate interest to challenge a de-
cision informing them of such change.*

5

*Executory act—Informatory act—Public Service—Change of
title of post in virtue of a law—Letter by the Public Service
Commission informing applicants of their position an appli-
cation of such law—Such letter is of an informatory
character.*

10

*Public Officers—Promotions—A Public Officer has no vested
right of promotion.*

By virtue of the Supplementary Budget Law (No. 4)
1980 (Law 45/80) and the Supplementary Appropriation
(Development Fund) Law (No 2) 1980 (Law 46/80) the
title of Lands Officer (on salary scale A. 10) was substi-
tuted by the title of Lands Officer 2nd Grade (on salary
scale A. 10) as from 1.1.80. On 12.12.80 the relevant
Order of the Council of Ministers (Section 3 of the change
of Titles Law, Cap. 40) was published in the Official Ga-
zette. By virtue of the aforesaid Laws there was also created

15

20

Polyviou v. The Improvement Board of Ayia Napa (1935)
3 C.L.R. 1058;

Christodoulides v. Republic (1985) 3 C.L.R. 1979;

Tseriotis v. Municipality of Nicosia (1984) 3 C.L.R. 1;

Mavrogenis v. Republic (1984) 3 C.L.R. 1140; 5

Phylaktides v. Republic (1984) 3 C.L.R. 1328;

Economides v. Republic (1972) 3 C.L.R. 506;

Leontiou v. Republic (1983) 3 C.L.R. 221;

Nicolaou v. Republic (1984) 3 C.L.R. 400.

Recourses. 10

Recourses against the decision of the respondent to emplace applicants to the post of Lands Officer 2nd Grade as from 1.1.1980 and not to the post of Lands Officer 1st Grade.

E. Lemonaris, for the applicants. 15

A. Papasavvas, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

DEMETRIADES J. read the following judgment. By means of the present recourses, which were heard together in view of their nature, the applicants seek the following relief: 20

“A) A declaration that the respondent’s act and/or decision to emplace the applicants to the post of Lands Officer 2nd Grade with effect from 1.1.1980, communicated to the applicants by letter of the respondent dated 28.2.1981 is null and void. 25

B) A declaration that the applicants are entitled to be emplaced in the post of Lands Officer 1st Grade with effect from 1.1.1980 and an order of the Court that respondent’s omission to emplace the applicants in the post of Land Officer 1st Grade ought not to 30

have been made and that whatever has been omitted should be performed.”

The applicants were, at the material time, serving in the post of Lands Officer, in the Department of Lands and Surveys. By virtue of the provisions of the Supplementary Budget Law (No. 4), 1980 (Law 45/80) and the Supplementary Appropriation (Development Fund) Law (No. 2), 1980 (Law 46/80), the title of the post of Lands Officer (on salary scale A 10) was substituted by the title of Lands Officer 2nd Grade (on salary scale A 10), as from the 1st January, 1980 and the applicants were emplaced, on the basis of the provisions of the above Laws, to the post of Lands Officer 2nd Grade, having been informed in writing by the respondent Commission, on the 28th February, 1981, about the aforesaid change of title of their post.

A relevant Order issued by the Council of Ministers under the provisions of section 3 of the Change of Titles Law, Cap. 40, was published in the Official Gazette (see Notification 354, in the Third Supplement, Part 1, dated the 12th December, 1980).

As by virtue of the provisions of the aforesaid Laws there was created a new post of Lands Officer 1st Grade (on salary scale A 11), counsel for the applicants submitted that on the basis of their qualifications and the relevant schemes of service, the applicants were entitled to be emplaced to the post of Lands Officer 1st Grade and that as a result of their aforesaid emplacement the rights of the applicants were affected and they were demoted. He further argued that by virtue of the provisions of the aforesaid Laws the post of Lands Officer was abolished and as in its place two new posts were created, namely the posts of Lands Officer 2nd Grade and Lands Officer 1st Grade, the applicants were entitled, as of right, to be emplaced to the higher post of Lands Officer 1st Grade, applying in this respect the established practice and Colonial Regulation 37.

On the other hand, counsel for the respondent Commission raised two preliminary objections, namely that the sub judice acts of the Commission are not of any executory

nature, in the sense of Article 146 of the Constitution, but of an informative nature and, therefore, they could not be challenged by a recourse and that the applicants lack legitimate interest under Article 146.2 of the Constitution to pursue further their present recourses.

5

I will deal first with the preliminary objections raised by counsel for the respondent Commission.

It is well settled that only executory acts or decisions, by means of which the will of the administration has been made known and which produce in themselves direct and immediate legal consequences, are amenable to the jurisdiction of this Court under Article 146 of the Constitution (see the Conclusions from the Case-Law of the Council of State in Greece, 1929 - 1959, pp. 236 - 237, *Iordanou v. The Republic*, (1985) 3 C.L.R. 476, 480, 481, *Preza v. The Republic*, (1985) 3 C.L.R. 1008, 1016 - 1018 and *Polyviou v. The Improvement Board of Ayia Napa*, (1985) 3 C.L.R. 1058, 1068) and that acts of an informatory nature lack executory character (see, inter alia, *Christodoulides v. The Republic*, (1985) 3 C.L.R. 1979, 1998, *Tseriotis v. The Municipality of Nicosia*, (1984) 3 C.L.R. 1, 8, *Mavrogenis v. The Republic*, (1984) 3 C.L.R. 1140, 1148 and *Phylaktides v. The Republic*, (1984) 3 C.L.R. 1328, 1332).

10

15

20

Reverting now to the facts of the present case and having considered the contents of the letter of the respondent Commission dated the 28th February, 1981, which is sub judice in the present proceedings, I have reached the conclusion that by means of such letter no decision was reached by the Public Service Commission as an administrative organ which is being communicated by it to the applicants but it simply informs the applicants about their position in the service on the application of the provisions of Law 46/80 and in conformity with the relevant Order of the Council of Ministers No. 34/80.

25

30

35

Therefore, no act or decision of the respondent Commission of an executory nature is contained in such letter,

which is only of an informatory character and, therefore, not amenable to the jurisdiction of this Court under Article 146 of the Constitution.

5 Coming now to the submission of counsel for the respondent Commission that the applicants do not possess a legitimate interest to pursue these recourses, counsel for the applicants argued that by their emplacement to the post of Lands Officer 2nd Grade the applicants were demoted and reduced in rank.

10 It is an undisputed fact that by the aforesaid change of title of their post the applicants suffered no financial detriment because the post of Lands Officer 2nd Grade is, also, on salary scale A 10, which was the salary of the post of Lands Officer previously held by the applicants.

15 Regarding now to their allegation that they were demoted and reduced in rank from a comparison of the duties and responsibilities, as these appear in the relevant schemes of service (see *exhibits 1 and 3*), it is abundantly clear that there is no substantial difference between them in this respect so as to lead one to the conclusion that they were placed in a disadvantageous position which affected the conditions and terms of their service to their prejudice.

25 Therefore, I am of the opinion that the applicants have no legitimate interest to pursue these recourses and that what was effected by the aforesaid Laws was a mere change in the title of their post as a result of which they could claim no more than what they had before.

30 Furthermore, the applicants could not claim that they were entitled to be emplaced to the post of Lands Officer 1st Grade as this would amount to a promotion for which they have no vested right (see, in this respect, *inter alia*, *Economides v. The Republic*, (1972) 3 C.L.R. 506, *Leontiou v. The Republic*, (1983) 3 C.L.R. 221 and *Nicolaou v. The Republic*, (1984) 3 C.L.R. 400).

35 I further find that as the respondent Commission had to apply the Law as it was there is no omission on their part

to do anything which they were bound to do under the relevant legislation.

In the result, the present recourses fail and are dismissed accordingly.

Applicants to pay the costs of the respondent.

5

Recourses dismissed with costs against applicants.