

1986 April 26

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION.

ELIAS P. KAVKARIS,

Applicant,

v.

1. THE VILLAGE AUTHORITY OF THE VILLAGE
SOUNI ZANATZIA THROUGH ITS CHAIRMAN,
2. THE REPUBLIC OF CYPRUS, THROUGH
THE DISTRICT OFFICER LIMASSOL,

Respondents.

(Case No. 636/84).

The Rural Constables Law, Cap. 287, as amended by Law, 46/69—Sections 5(a), 6(2) and 10—The only competent authority to appoint a rural constable is the District Officer of the District where the village or group of villages are situate—In the absence of such appointment one cannot claim the benefits of the post.

5

Administrative Law—General principles—Appointment in the public service—It comes to an end at the expiration of the time limited in the appointment—Renewal by implication or sufferance—Not possible.

10

Administrative Practice—Cannot override the plain provisions of the law.

15

The Law governing the appointment of Rural Constables is Cap. 287 as amended by Law 46/69. Power for the appointment of rural constables vests exclusively in the District Officer (s. 6(1)). The appointment should be for a two-year period (s. 6(2)).

The applicant was first appointed rural constable by the District Officer of Limassol in 1969. His appointment

was renewed at two years intervals up to 31.12.83. By a resolution of the Village Commission of Souni Zanatzia he was appointed rural constable for the village for a three month period as from 1.1.84. At the expiration of this period the applicant continued rendering services as a rural constable. On 5.10.84 the said village Commission decided to terminate the applicant's services as from 31.10.84. This decision was communicated to the applicant by letter dated 6.10.84 by the District Officer of Limassol. As a result the applicant filed the present recourse.

Held, dismissing the recourse (1) The sole authority competent to appoint a rural constable is the District Officer of the district where the village or group of villages are situate. The only way a person can be appointed a rural constable is by positive action of the District Officer. This is clear from s. 6(1) of the Law. Appointment in the public service comes to an end on the expiration of the time limited therein. No renewal is possible by implication or sufferance. That this is the effect of the law in the case of rural constables is made abundantly clear by s. 10 of the said law.

(2) An administrative practice cannot override the plain provisions of the Law. Further none of the events hereinabove described could lead the applicant to assume that he was re-appointed for a further two-year period.

(3) No one can be appointed a rural constable except in accordance with the provisions of the Rural Constables Law. In the absence of such appointment one cannot claim the benefits of the post or that he should be treated as a rural constable. The present case is distinguishable from cases where a decision emanates from a competent authority but is taken by an unauthorised organ of such body.

Recourse dismissed.

No order as to costs.

Cases referred to:

Papadopoulou v. The Republic (1984) 3 C.L.R. 332;

Antoniades and Others v. Municipal Council Paphos (1985)
3 C.L.R. 1695;

Paraskeva and Another v. Municipal Committee of Limassol (1984) 3 C.L.R. 54.

5 **Recourse.**

Recourse against the decision of the respondents to terminate applicant's services as a rural constable of Souni Zanatzia village.

Chr. Pourgourides, for the applicant.

10 *St. Stylianou* with *P. Demosthenous*, for respondent No. 1.

Cl. Theodoulou (Mrs.), Senior Counsel of the Republic, for respondent No. 2.

Cur. adv. vult.

15 PIKIS J read the following judgment. A chronological survey of the events leading to the termination of the services of the applicant as rural constable of Souni Zanatzia, one of the two villages forming with Vouni a Group, will best illuminate matters in issue and pave the way for their resolution. The law governing the appointment of rural constables and regulating their terms of services is the Rural Constables Law, Cap. 287, as amended by Law 20 46/69. The needs of the Group of villages for the services of rural constables are, in accordance with s. 5(a) of the Law, determined by the Village Commission or where the vilages belong to a Group, by a Group Commission. Power for the appointment of rural constables vests exclusively in the District Officer (s. 6(1)), and in the case of the Souni Zanatzia in the District Officer Limassol. The appointment 30 of a rural constable should, by virtue of the mandatory provisions of subsection 2 of s. 6, be for a two-year period. No right vests in a rural constable to re-appointment after the expiration of his term of service; he is merely eligible for re-appointment for a further two-year period. This is 35 the legal framework in which we must examine subsequent events and the decision, the legality of which we are required to review.

The applicant was first appointed rural constable by the District Officer of Limassol in 1969. His appointment was renewed at two years intervals up to 31st December, 1983. The focal point in these proceedings are the events following thereafter with particular reference to the status of the applicant after 31st December, 1983. By a resolution of the Village Commission of Souni Zanatzia dated 17th February, 1984, he was appointed rural constable for the village for a three-month period, that is, from 1st January, 1984, to 31st March, 1984. The decision did not specify the law in virtue of which they claimed competence to appoint a rural constable. The Rural Constables Law gives them no such power. At the expiration of the three-month period, applicant continued rendering services as a rural constable, notwithstanding the absence of a decision of either the Group Commission or the Village Commission of Souni Zanatzia extending his services. He continued serving in that capacity until 6.10.1984 when informed by a letter of the District Officer Limassol that his services were terminated as from 31.10.1984. The District Officer communicated by the aforesaid letter a decision of the Village Commission of Souni Zanatzia of the previous day to the effect that his services would be terminated because of the abolition of two posts of rural constables for the area of Souni Zanatzia. After 31st October, 1984, one rural constable remained in service for the area under the control of the Group Commission. The decision challenged in this recourse is that of the Village Commission of Souni Zanatzia of 5.10.1984 allegedly taken in excess or abuse of power. The points raised in support of this submission are the following:-

The Village Commission of Souni Zanatzia had no authority in law to terminate the services of the applicant. Only the District Officer could assume the exercise of this power but under no circumstances in a way bringing to a premature end his two-year appointment. This submission is premised on the argument that applicant was appointed to serve as rural constable for a two-year period after the expiration of his previous term of appointment. It is the contention of the applicant this was the effect of events subsequent to that date and that we should construe them

as importing an implied appointment of the applicant by the District Officer of Limassol for a further period of two years commencing 1st January, 1984.

5 Counsel for the Republic representing the District Officer, joined as a separate party, questioned the joinder as improper for no decision of the District Officer is impugned in these proceedings. Further she contended that power for the determination of the needs of the area for rural constables vested exclusively in the Group Commission and
10 any assumption of power in this respect by the Village Commission of Souni Zanatzia was wholly ineffective in Law.

The essence of the case for the Village Commission of Souni Zanatzia is that the appointment of the applicant
15 after the termination of his services as a rural constable was an ad hoc arrangement made wholly outside the provisions of the Rural Constables Law and as such not reviewable by reference to the legal regime obtaining under the Rural Constables Law.

20 The sole authority competent to appoint rural constables is the District Officer of the district where the village or Group of villages are situate. In case of failure on the part of the District Officer to exercise the powers vested him under s. 6(1) of the Law, such failure may be re-
25 viewed as an omission to carry out a statutory duty. Evidently we are not required in these proceedings to review any such omission on the part of the District Officer. Secondly, the only way a person can be appointed a rural constable is by a positive decision of the District Officer.
30 This is clear from the provisions of s. 6(1) and the relevant principles of administrative law. Appointment in the public service for a fixed term comes to an end on the expiration of the time limited therein. No renewal is possible by implication or sufferance. (See *Conclusions of the Greek Council of State*, 1929-1959, page 321). That this is the effect of
35 the law in the case of rural constables, is made abundantly clear by s. 10 of the law regulating their terms of service. Nor is it possible to override the plain provisions of the law by administrative practice(1). Reference to this aspect

(1) Papadopoulou v. The Republic (1984) 3 C.L.R. 332.

of administrative law is made in answer to the submission that the appointment of the applicant as rural constable from the very beginning was fraught with irregularity and consequently in that realm of irregularity his re-appointment after 31st December, 1983, should be impliedly presumed. Further, none of the events chronicled above could lead the applicant to assume that he was re-appointed as rural constable for a further two-year period. On the contrary, his appointment by a body other than the District Officer, coupled with the limited duration of his appointment, a three-month period, should have disabused him of any false impression about the events following the expiration of his appointment.

No one can be appointed a rural constable except in accordance with the provisions of the Rural Constables Law. In the absence of such appointment one cannot claim the benefits of the post or that he should be treated as a rural constable. The present case is distinguishable from cases where a decision emanates from a competent authority but is taken by an unauthorised organ of such body⁽¹⁾.

In the light of the above analysis of the legal and factual background to this case, the application of the applicant for review collapses. We are not in these proceedings required to review the implications of the decision of the Village Commission of Souni Zanatzia outside the provisions of the Rural Constables Law, Cap. 287. His claim is solely pegged to the contention that he was appointed a rural constable after 31st December, 1983. This view of the facts is wholly unfounded. Therefore, the application fails.

In the result the recourse is dismissed. There shall be no order as to costs.

*Recourse dismissed.
No order as to costs.*

⁽¹⁾ Antoniadis and Others v Municipal Council Paphos (1985) 3 C.L.R. 1695; Paraskeva and Another v Municipal Committee of Limassol (1984) 3 C.L.R. 54.