

1986 March 12

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

ANDREAS PAPADOPOULOS,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

*(Case No. 48/84).*

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*Public Officers—Transfers—Principles applicable to judicial re-  
view of—Court not entitled to evaluate the reasons of  
substance of the transfer.*

5           The applicant, who is a Welfare Officer, 2nd Grade,  
was first appointed in the Welfare Service in December,  
1963 and was posted in Limassol where he had been  
serving continuously till the date of his sub judice transfer  
to Larnaca. He is married and has two children aged 10  
and 6 respectively. He owns a house in Limassol, where  
10          he lives with his family.

When applicant was informed by the Director of the De-  
partment that the latter intended to propose applicant's  
transfer to Larnaca, the applicant objected in writing re-

that the respondent Commission conducted a due inquiry into the matter.

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

5 Cases referred to:

*Sentonaris v. The Greek Communal Chamber*, 1964  
C.L.R. 300;

*Paraskeva v. The Republic* (1984) 3 C.L.R. 593.

**Recourse.**

10 Recourse against the decision of the respondent to transfer applicant from the District Welfare Office of Limassol to the District Welfare Office of Larnaca.

*N. Neocleous*, for the applicant.

*E. Papadopoulou (Mrs.)*, for the respondent.

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*Cur. adv. vult.*

SAVVIDES J. read the following judgment. Applicant by the present recourse seeks the annulment of the decision of the respondent to transfer him from the District Welfare Office of Limassol to the District Welfare Office of Larnaca. It is the contention of the applicant that the sub  
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(a) It was taken in abuse and/or in excess of power and/or contrary to the relevant law and/or regulations and the principles of administrative law.

(b) It was taken contrary to the requirements of the

service and in any event it does not serve any purpose of the service.

(c) It was taken in a manner amounting to wrong exercise of discretion.

(d) It is not duly reasoned.

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(e) It was taken in full disregard of the personal circumstances of the applicant and

(f) It amounts to a disciplinary punishment and/or a disciplinary measure against the applicant.

The applicant is a Welfare Officer, 2nd Grade, a post to which he was in fact promoted by a decision of the respondent communicated to him on the 19th December, 1983, with retrospective effect as from the 15th March, 1982. From what appears from the material before me, and in particular a letter dated the 15th September, 1983, which was written by applicant protesting against his proposed transfer, an offer had been made to him prior to that date for his promotion to the post of Welfare Officer, 2nd Grade, with effect as from February, 1983, due to the regrading of the post, to which he complained that the offer should have been made with retrospective effect as from March, 1982, as in the case of all other officers of the same rank.

The applicant was first appointed in the Welfare Service in December, 1963, and was posted in Limassol where he had been serving continuously till the date of his transfer to Larnaca. He is married and has two children aged 10 and 6 respectively. He owns a house in Limassol, where he lives with his family, as well as other immovable property.

The applicant was informed by telephone, by the Director of the Department, that the latter was intending to make a proposal to the respondent Commission for his

transfer from Limassol to Larnaca as from the 15th November, 1983. The applicant by letter dated the 15th September, 1983, addressed to the Director of Welfare Services, objected to such transfer, setting out the reason for his objection, which are mainly reasons of family inconvenience and financial problems which he would have to face by such transfer.

Then the Director of Welfare Services made a proposal, on 21.9.1983, to the respondent Commission for the transfer of the applicant from Limassol to Larnaca as from 15.11.83. In the said proposal the reasons for the proposed transfer are given as being the need for the replacement of another officer, namely, Christos Symeonides, Welfare Officer Third Grade on contract who was to be transferred from Larnaca to Limassol. The family conditions of the applicant and any other relevant particulars are also mentioned in the said proposal to which there was attached a copy of the letter of the applicant dated the 15th September, 1983, containing the reasons for his objection to his transfer.

The respondent Commission by letter dated the 11th October, 1983, asked the Director of Welfare Services to submit his observations on the reasons raised by the applicant in his objection, and also to examine the possibility of the alternative transfer of another officer with less serious problems. The Director of Welfare Services after having carried out an inquiry on the matters raised by such letter replied to the respondent by letter dated the 27th October, 1983, enclosing in his letter a report as to the family and financial condition of all officers holding a similar position and posted in the Welfare Office of Limassol, as well as the posts in which they had served in other parts of Cyprus.

The respondent met on the 15th November, 1983, to consider the proposal of the Director of Welfare Services for the transfer of the applicant to Larnaca. The record of

the minutes of such meeting has been produced as Exhibit 1.

For the purposes of this recourse I find it necessary to reproduce the record of this meeting concerning the transfer of the applicant as it appears in Exhibit 1, which reads as follows: 5

"The Director of Welfare Services by his letter No. YKE 4/13/06 dated 21.9.1983 submitted a proposal for the transfer of Andreas Papadopoulos, Welfare Officer, 2nd Grade, from Limassol to Larnaca as from 15.11.83. 10

The Director in his proposal mentioned that the proposed transfer is made for the purpose of replacing another Welfare Officer who is serving at Larnaca for more than three years and who will be transferred to Limassol. 15

Papadopoulos by his letter dated 15.9.1983, protested and submitted an objection to his proposed transfer.

The office of the Public Service Commission, by its letter No. 9/60/G/III dated 11.10.83, requested the Director of Welfare Services to submit his observations on the grounds raised in the objection of the officer. 20

The Director of Welfare Services by his letter No. YKE 4/13/06 dated 27.10.83, informed the Public Service Commission that the proposal for the transfer of Andreas Papadopoulos had been made after a careful consideration and personal contacts of the Director with all officers likely to be transferred and that a summary of the circumstances concerning each officer which were taken into consideration were submitted with his letter No. 4/13/06 dated 11.10.83. 25 30

5 The Commission having taken into consideration the above, and having examined all material before it, came to the conclusion that it is in the interest of the service that Andreas Papadopoulos, Welfare Officer, 2nd Grade in the Social Welfare Services, be transferred from Limassol to Larnaca as from the 28th November, 1983."

Such decision has been challenged by this recourse.

10 Counsel for respondent, by his opposition contended that the sub judice decision was taken in accordance with the relevant law and in the proper exercise of the discretionary power of the respondent and after all material facts were taken into consideration.

15 By his written address counsel for applicant contends that other officers serving in the post of Assistant Welfare Officer who had been promoted on previous occasions to the post of Welfare Officer, were never transferred and that a number of other officers who were facing less serious family problems or financial difficulties and were serving in Limassol had not been transferred.

25 Concerning the report of the Director of Welfare Services as to the personal circumstances of the various officers in Limassol, it is counsel's contention that the Director failed to disclose all material facts concerning them alleging that certain of them are in a better financial position and their spouses or their parents own considerable immovable property or make a lot of money out of their employment which makes their financial position better than that of the applicant.

30 A lot of irrelevant allegations is included concerning the delayed promotion of the applicant which have no bearing on this case in view of the fact that I do not have before me any recourse directed against the promotion of others in preference to him. He concludes his address by  
35 alleging that -

- (a) the transfer was not effected in the public interest.
- (b) it was effected for the purpose of facilitating others,
- (c) it was made in the absence of any service requirement to that effect,
- (d) applicant is performing the same duties, notwithstanding the fact that his promotion and transfer do not justify this, 5
- (e) it was made on the basis of information and material furnished by the Director which was misleading,
- (f) it was effected, notwithstanding the fact that other unmarried officers who were not permanent residents of Limassol, have never been transferred, 10
- (g) it was made in order to facilitate officers on contract whilst applicant was a permanent officer,
- (h) it was effected without the Public Service Commission having before it all relevant material required for effecting such transfer. 15

Counsel for respondent by her written address contested the grounds advanced by the applicant and submitted that the case was a formal case of a transfer effected in accordance with the law in view of the exigencies of the service. Counsel further submitted that all personal circumstances of the applicant and those of other officers serving in Limassol were examined by the Head of the Department and a summary of them, concerning each officer was submitted to the respondent Commission and was included in the material which was taken into consideration by the respondent in effecting such transfer. 20 25

Counsel pointed out that the applicant had been posted in Limassol on first appointment and had been serving con- 30

tinuously for 15 years, without any transfer. She added that the respondent exercised its discretion properly having taken into consideration all material facts and that sufficient reasoning is given in its decision indicating that all material facts raised by the applicant had been taken into consideration. She concluded her address by submitting that the applicant failed to establish that the sub judice transfer was in the nature of a punishment or the result of an undue inquiry into the matter, the burden in respect of both of which lied upon him.

In the course of clarifications, counsel for applicant submitted that the transfer of the applicant was made for the purpose of filling the gap which was created by the transfer of an officer serving on contract. He submitted that permanent public officers are liable to transfer if there are no temporary officers serving and that they should not be transferred for the purpose of facilitating the transfer of a temporary officer from one town to another. In support of his contention, he sought to rely on the case of *Paraskeva v. The Republic* (1984) 3 C.L.R. 593.

Counsel for the respondent in answer to the above and in clarification to his written address, submitted that the respondent Commission effected the transfer bearing in mind all material facts concerning the problems raised by the applicant and after due inquiry into all matters and the exigencies of the service.

The principles applicable to judicial review of transfers have been lucidly expounded by the President of this Court in *Stavros Sentonaris and The Greek Communal Chamber, through the Director of Greek Education*, 1964 C.L.R. p. 300, in which, after reviewing the principles emanating from Greek Administrative Law and the Greek Jurisprudence, he found as follows at page 306:

“In the light of the above-discussed principles of Administrative Law I reached the conclusion that I



am not entitled to evaluate the reasons of substance on which the transfer of applicant was based. It is, moreover, clear that it is not a punitive transfer, neither an arbitrary one. As a matter of fact before the Review Committee the applicant tried to present it as being punitive, in part, but after a statement by Mr. Kouros that it was not at all of a disciplinary nature applicant did not appear to press this point further, nor was anything of this nature alleged before this Court.”

In “The Law on Civil Administrative Officers” by Kyriacopoulos 1954 p. 298, it is stated that:

«Ἐκτός τῆς δυσμενοῦς μεταθέσεως, ἥτις.... ἀποτελεῖ ποινήν, πᾶσα ἄλλη μετάθεσις—περὶ ἧς καὶ μόνον πρόκειται ἐνταῦθα—ἀποτελεῖ ἀπλοῦν διοικητικὸν μέτρον, τὸ ὁποῖον τεκμαίρεται, ὅτι λαμβάνεται πρὸς τὸ συμφέρον καὶ τὰς ἀνάγκας τῆς ὑπηρεσίας. Διὰ τοῦτο, κατὰ τῆς σχετικῆς ἀποφάσεως τοῦ ὑπηρεσιακοῦ συμβουλίου δὲν χωρεῖ προσφυγὴ τῆς οὐσίας ἐνώπιον τοῦ Συμβουλίου τῆς Ἐπικρατείας».

(“Except for an adverse transfer, which .... amounts to a punishment, every other transfer—with which only we are concerned here—amounts to a simple administrative step, which is presumed to have been taken for the benefit and exigencies of the service. For this reason, against the relevant decision of the Service Board there does not lie a recourse on the substance before the Council of State”).

And in a footnote it is added -

«Ἡ κρίσις τῆς διοικήσεως ἐπὶ τῶν λόγων, οἵτινες ὑπαγορεύουσι τὴν μετάθεσιν δὲν ὑπόκειται εἰς τὸν ἔλεγχον τοῦ ἀκυρωτικοῦ δικαστοῦ ἐκτός ἂν συντρέχη κακὴ χρῆσις τῆς διακριτικῆς ἐξουσίας ἢ πλάνη περὶ τὰ πράγματα».

(“The judgment of the administration concerning the reasons, which dictate the transfer, is not subject

to the control of an annulling court except if there exists an improper use of the discretionary power or a misconception concerning the factual situation”).

5 Before applying the above principles to the present case I shall deal briefly with the argument of counsel for applicant in the course of clarifications concerning the principles expounded in *Paraskeva v. The Republic* (supra). The said case is differentiated from the present one as that case concerned educationalists and the transfer was based on regulations which govern the matters of postings and transfers of educationalists. Under Regulation 15(2) of the Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) Regulations of 1972, educationalists who are appointed on contract for the purpose of replacing others temporarily undisposed, are employed on condition that they may be posted at any place where such replacement is necessary; and under Regulation 17, special criteria are being set out concerning the order of priority of claims for transfer. I, therefore, find that the pronouncements in that case have no application in the present one.

25 The contention of counsel for applicant that his transfer amounts to a disciplinary punishment, and/or punitive measure, has not been substantiated either by anything contained in the material before me or by any evidence to that end. The burden of proof for such contention was upon the applicant and he failed to discharge it. I, therefore, find such contention entirely unfounded.

30 What remains to be examined, is whether the respondent Commission has made a wrong use of its discretionary power of transfer or whether in effecting the transfer in question it has acted under a misconception of the factual situation or that any material factors have not been taken into consideration.

35 From the material before me, I am satisfied that the respondent Commission in effecting the said transfer had made a due inquiry into all matters raised by the applicant

and went further to examine the possibility of the transfer of any other officer from Limassol and for such purpose it directed an inquiry into the matter. In effecting the transfer respondent had before it all necessary material concerning the financial and family problems both of the applicant and all other officers holding a similar post in the Welfare Office of Limassol as well as all grounds raised by the applicant in his objection. Therefore, I have come to the conclusion that the allegation of undue inquiry on the factual position is unfounded and that all material factors had been taken into consideration before the respondent reached its decision that the said transfer was necessary for the exigencies of the service.

Having reached the conclusion that the transfer does not amount to a punishment but it is a transfer which has been effected for the exigencies of the service I find that the respondent in reaching its decision has exercised properly its discretionary powers.

In the result, this recourse fails and is dismissed accordingly, but in the circumstances of the case I make no order for costs.

*Recourse dismissed.  
No order as to costs.*