

1987 February 24

(TRIANAFYLIDIS P MALAHTOS SAVVIDES LORIS KOURRIS JJ)

ALEXANDROS PANTAZIS

Appellant(Applicant),

v

THE REPUBLIC OF CYPRUS, THROUGH
1 THE PUBLIC SERVICE COMMISSION,
2 THE CHAIRMAN OF THE PUBLIC SERVICE COMMISSION,

Respondents

(Revisional Jurisdiction Appeal No 550)

Administrative Law — Due inquiry — Failure of relating to the applicability of general principles of law to the complicated facts of this case — Ground of annulment — Revocation of promotions of public officer following annulment of his promotion to the post (Senior Surveyor) from which the revoked promotions had been made — In reaching the sub judice decision of revocation the Commission relied on advice of Office of Attorney General given on another occasion, i e in respect of a previous annulment of the promotion of the same officer to the same post of Senior Surveyor — In view of the complicated developments in the said officer's career the Commission ought to have sought afresh the advice of the Attorney-General

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The promotion of the appellant to the post of Senior Surveyor from which the appellant was further promoted to the post of Lands Officer and Lands Officer, 1st Grade, was annulled by this Court

As a result of such annulment, the Public Service Commission, revoked the further promotions of the appellant to the post of Lands Officer and Lands Officer, 1st Grade, acting on the advice of the Office of the Attorney General This advice, however, was not given in respect of the said annulment, but in respect of the consequences, of another previous annulment of the promotion of the appellant to the post of Senior Surveyor

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The appellant impugned the aforesaid revocation by a recourse for annulment The recourse was dismissed Hence this appeal

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Held, *allowing the appeal* (1) In view, especially of the very complicated sequence of relevant developments in the career of the appellant, which are fully set out in *Pantazis v The Republic* (1986) 3 C L R 239, the Commission should not have merely acted by analogy on the basis of the aforementioned legal advice which was given earlier on from the Office of the Attorney-General in relation to another matter, but it ought to have sought afresh legal advice from the Office of the Attorney-General as regards what it was legally bound to do in the circumstances of the present case

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(2) It follows that the sub judge decision was reached without due inquiry as to the applicability of general principles of law to the very complicated facts of this case

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*Appeal allowed Sub judge
decision annulled. No order
as to costs*

Cases referred to

Kalsperas v The Republic (1986) 3 C.L R.771.

Appeal.

10 Appeal against the judgment of a Judge of the Supreme Court
of Cyprus (A. Loizou, J.) given on the 11th January, 1986
(Revisional Jurisdiction Case No. 117/84)* whereby appellant's
recourse against the revocation by the Public Service Commission
15 of his promotions to the post of Lands Officer and Lands Officer,
1st Grade was dismissed.

L. Papaphilippou, for the appellant.

*R. Gavrielides, Senior Counsel of the Republic, for the
respondents.*

Cur. adv. vult.

20 TRIANTAFYLLIDES P. read the following judgment of the
Court. The appellant has appealed from the first instance
judgment of a Judge of this Court by means of which there was
dismissed his recourse (117/84), under Article 146 of the
Constitution, against the revocation by the respondent Public
25 Service Commission of the promotions of the appellant to the post
of Lands Officer and Lands Officer, 1st Grade.

Such revocation was decided by the Commission on the 30th
December 1983 after the Supreme Court had annulled the
decision of the Commission to promote the appellant to the post
30 of Senior Surveyor, from which he was promoted to the posts of
Lands Officer and Lands Officer, 1st Grade.

The sequence of relevant events appears to have been as
follows:

35 The Office of the Attorney-General of the Republic forwarded
to the Commission the judgment of the Supreme Court in

* Reported in (1986) 3 C.L.R. 239.

recourse 499/80 by means of which the promotion of the appellant to the post of Senior Surveyor was annulled on the 21st December 1983

The Commission had already before it legal advice given to it by the Office of the Attorney-General on the 21st June 1980 in relation to an analogous, but not identical situation, concerning the appellant, and in accordance with such advice the annulment of the promotion of a public officer to a particular post entails annulment of his subsequent promotions to higher promotion posts

The Commission, bearing in mind its obligation to restore the situation which existed prior to its decision which had been judicially annulled, decided that the judicial annulment of the promotion of the appellant to the post of Senior Surveyor necessarily entailed and the annulment of the subsequent promotions of the appellant to the higher posts of Lands Officer and Lands Officer, 1st Grade and a letter to that effect was sent by the Commission to the appellant on the 31st December 1983

It is common ground that the appellant was not notified in any way of the intention of the respondent Commission to revoke its decisions regarding the subsequent promotions of the appellant to the aforementioned two higher posts, and in this respect we have been referred by counsel for the appellant to *Frangoullides v The Public Service Commission* (1985) 3 C L R 1680, 1686, but we need not pronounce in this judgment on this aspect of the matter.

We have before us the aforementioned legal advice of the 21st June 1980 and there appears from its text that it was given in response to a question by the respondent Commission whether the legality of the composition of a Departmental Board, in which the appellant was participating in his capacity as a Lands Officer, was affected by the fact that an earlier promotion of the appellant to the post of Senior Surveyor had been annulled, and it must be noted that this was an annulment of a promotion of the appellant to the post of Senior Surveyor on a past occasion, other than the annulment of his promotion to the same post by the aforementioned judgment of the 21st December 1983 in recourse 499/80

The Law Officer in the Office of the Attorney-General who gave the advice in question replied to the Commission in the affirmative, because in his view the promotion of the appellant to

the post of Lands Officer had been directly based on his annulled promotion to the post of Senior Surveyor.

5 As it will be seen from what has been stated above the advice given, as aforesaid, to the respondent Commission on the 21st June 1980 did not expressly prescribe that the Commission had to revoke, on that previous occasion, the promotion of the appellant to the post of Lands Officer because an earlier promotion of his to the post of Senior Surveyor had been judicially annulled.

10 In view, especially, of the very complicated sequence of relevant developments in the career of the appellant, to which we need not refer in detail since they are fully set out in the very carefully prepared judgment of the trial Judge (see *Pantazis v. The Republic*, (1986) 3 C.L.R. 239), we are of the opinion that the Commission before proceeding on the present occasion to, in effect, demolish the structure in such career, should not have merely acted by analogy on the basis of the aforementioned legal advice which was given earlier on by the Office the Attorney-General in relation to another matter, but the Commission ought to have sought afresh legal advice from the Office of the Attorney-General as regards what it was legally bound to do in the circumstances of the present case.

25 We are, therefore, of the view that in acting as it has done the respondent Commission has reached its sub judice decision without due inquiry as regards the applicability of general principles of law to the very complicated facts of this specific case (see, inter alia, in this respect, *Kalisperas v. The Republic* (1986) 3 C.L.R. 771, 777).

30 In the light of all the foregoing this appeal is allowed and the sub judice decision of the respondent Commission to revoke the two aforementioned promotions of the appellant is annulled; but we shall not make any order as to the costs of this appeal.

Appeal allowed.
No order as to costs.