

1988 July 20

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS IOANNIDES AND OTHERS,

Applicants,

v.

THE CYPRUS GRAIN COMMISSION,

Respondents.

(Cases Nos. 69/84, 70/84 and 71/84).

Administrative act—Validity of—Should be judged as at the time it was actually taken—Subsequent acts, even retrospective from a point of time preceding the sub judice act, cannot affect the latter's validity.

General principles of administrative law—Promotions—In the absence of an express provision to the contrary, no officer can be promoted for more than one grade at a time. 5

By means of the sub judice decision taken in December, 1983, the interested party, who, at the time, was holding the post of Accounting Officer, 3rd Grade, in the Grain Commission, was promoted to the post of Accounting Officer, 1st Grade. In April, 1984 he was promoted with retrospective effect as from 1982 to the post of Accounting Officer, 2nd Grade. 10

In the light of the principles summarized in the hereinabove headnote, the Court annulled the sub judice promotions.

*Sub judice decision annulled.
Costs against respondents.* 15

Cases referred to:

Arkatiitis and Others (No.2) v. The Republic (1967) 3 C.L.R., 429.

Recourses.

Recourses against the decision of the respondents to appoint the interested party to the post of Accounting Officer 1st Grade in preference and instead of the applicant.

5 *E. Efstathiou*, for the applicants.

C. Velaris, for the respondents.

Cur. adv. vult.

10 DEMETRIADES J. read the following judgment. The three applicants by this recourse challenge the decision of the respondents dated the 8th December, 1983; by which the interested party Kyriacos Triftarides was promoted to the post of Accounting Officer 1st Grade instead of and in preference to them.

The applicants and the interested party are all in the service of the respondents.

15 Applicant in Case No. 69/84, Andreas Ioannides, was first appointed in 1970 as a Store-keeper 3rd Grade. He was promoted to the 2nd Grade in 1973, a position which he still held at the time of the sub judice decision. By a decision of the respondents dated the 28th June, 1984, he was promoted to the post of Store-keeper 1st Grade retrospectively as from the 1st October, 1983 (red 94 in
20 his file, which is an exhibit before the Court).

25 Applicant in Case No. 70/84, Frixos Kongorozis, was appointed in 1965 as a Store-keeper 3rd Grade. He was promoted to Accounting Officer 3rd Grade in 1972 and to 2nd Grade in 1979, a post which he still held at the time of the sub judice decision.

Applicant in Case No. 71/84, Costas Koufopavlou, was first appointed in 1965 as a Store-keeper 3rd Grade and was promoted to Accounting Officer 3rd Grade in 1969, a post which he still held at the time of the sub judice decision. He was promoted to

the post of Accounting Officer 2nd Grade by a decision of the respondents dated the 30th April, 1984, subsequent to the sub judge decision, retrospectively, as from the 15th March, 1982 (red 126 in his file before the Court).

The interested party was appointed in 1972 as a Store-keeper 3rd Grade and was promoted in the 2nd Grade in 1976. In 1977 he became an Accounting Officer 3rd Grade, a position he still held at the time of the sub judge decision. 5

At their meeting dated the 8th December, 1983, the respondents decided to promote the interested party to the post of Accounting Officer 1st Grade, as from the 1st January, 1984 (red 88 in his personal file, which is exhibit No. 3 before the Court, and, also, exhibit No.5). Subsequently, the respondents, at their meeting dated the 30th April, 1984, decided to promote the interested party to the post of Accounting Officer 2nd Grade retrospectively, as from the 15th March, 1982, (red 94 in exhibit No. 3). 10 15

The applicants, who were all candidates for promotion to the post of Accounting Officer 1st Grade, filed the present recourse challenging the promotion of the interested party to the aforesaid post. 20

Counsel for the applicants argued that the interested party did not possess the required qualifications at the time of the sub judge decision in that he did not hold the post of Accounting Officer 2nd Grade, but that of 3rd Grade and was thus promoted by more than one Grade at the time which is contrary to the general principles of administrative law. He also argued that the respondents failed to select the best candidate for promotion; that undue weight was placed to the performance of the candidates at the interviews before them and that there is lack of due inquiry. 25

Counsel for the respondents argued that the interested party was holding, at the material time, the post of Accounting Officer 2nd Grade, to which he was promoted on the 30th April, 1984, retrospectively as from the 15th March, 1982, and as a result pos- 30

5 sessed the required qualifications for the promotion in question. In any event, it is counsel's argument, that the interested party was qualified for the promotion in question under the express provisions of the schemes of service for the said post, which allow the promotion of any officer who possesses the qualifications prescribed therein. Counsel further argued that the interested party is superior to the applicants both in merit and qualifications.

10 Having examined the files of the parties I find that the contention of counsel for the respondents that at the material time of the sub judge promotions the interested party held the post of Accounting Officer 2nd Grade cannot be supported by what is contained therein. It is clear from the personal file of the interested party (exhibit No. 3 reds 93 and 94) that the decision to promote the interested party to the post of the Accounting Officer 2nd Grade was taken at the meeting of the respondents dated the 30th April, 1984, whilst the sub judge decision was taken on the 8th December, 1983, that is to say it was taken more than four months prior to the decision for his promotion. Thus, although the said promotion was made with retrospective effect, as from the 15th March, 1982, at the time of the sub judge decision the decision to promote the interested party to the 2nd Grade had not actually been reached with the result that he was then, at the time of the sub judge decision, still holding the post of Accounting Officer 3rd Grade.

25 It is a cardinal principle of administrative law that the validity of an act or decision must be judged as at the time it was actually taken and that subsequent acts cannot be taken into consideration.

30 It is also a general principle of administrative law that no officer will be promoted by more than one grade at a time, in the absence of an express legislative provision to that effect (see *Arkatiitis & others (No. 2) The Republic*, (1967) 3 C.L.R. 429, at pp. 434-435, where other authorities are mentioned).

Considering all the facts before me there is no doubt in my mind that the interested party was promoted by more than one

grade.

The qualifications required for appointment to the post of Accounting Officer 1st Grade, relevant to the applicants and the interested party, are paragraphs 1(b) (i) and Note 2 of the schemes of service of the post, which read as follows:

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"(1) (α)

(β) (i) Απολυτήριο αναγνωρισμένης Σχολής Μέσης Εκπαιδύσεως και δεκαετής υπηρεσία στην Επιτροπή Σιτηρών από την οποία τριετής στην κλίμακα Α7 και

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(ι)

Σημειώσεις:

(1)

(2) Μηνιαίοι υπάλληλοι της Επιτροπής Σιτηρών υπηρετούντες την 31η Μαρτίου 1982 εξαιρούνται από την υπηρεσία που αναφέρει η παράγραφος (1) (β) (i) ανωτέρω, νοουμένου ότι θα έχουν 7ετή συνολική υπηρεσία στην Επιτροπή."

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("(1) (α)

(b) (i) Leaving certificate of a recognized school of Secondary Education and ten years service in the Grain Commission three of which at scale A7."

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(ii)

Notes:

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(1)

(2) Monthly paid officers of the Grain Commission serving on the 31st March, 1982, are exempted from the service mentioned in paragraph (1) (b) (i) above, provided they have 7 years' service as a whole in the Commission."

5 In my view, the wording of Note (2) above does not amount to an express statutory provision allowing promotion by more than one Grade at a time. The exemption provided by this Note refers to the ten years' service in the commission three of which on scale A7 (which is presumably the scale of Accounting Officer 2nd Grade), and means, in my view, that an officer may be promoted, if he holds the post of Accounting Officer 2nd Grade for less than three years provided he has an overall service of seven years in the Commission.

15 As a result, I find that the sub judice decision must be annulled on this ground.

In view of my finding as above, I find it unnecessary to embark on the other grounds regarding the merits of the parties.

In the result, these recourses succeed and the sub judice decision is hereby annulled with costs against the respondents.

20 *Sub-judice decision annulled with costs against the respondents.*