

1988 August 29

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS PHIVOU GREGORIOU AND OTHERS,

Applicants.

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF INTERIOR,

2. THE MINISTER OF FINANCE,

Respondents.

(Case Nos. 272/87 - 287/87).

*Legitimate interest—Acceptance of an act or decision without protest—
Deprives acceptor of its legitimate interest to challenge such act or decision.*

Time within which to file a recourse.

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The applicants were casual prison wardens. They were offered permanent appointment to the Fire Service on salary scale A3. They accepted such appointment. Two and a half years later they complained about their salary scale. The dismissal of their complaints led to the filing of these recourses. The court dismissed them both on the ground that the applicants lack legitimate interest, as they had accepted without protest the terms of their said appointment and on the ground that the recourses were filed out of time.

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Recourses dismissed.

No order as to costs.

Cases referred to:

Neocleous and Others v. The Republic (1980) 3 C.L.R. 497;

Tomboli v. CYTA (1980) 3 C.L.R. 266; and on appeal (1982) 3 C.L.R. 149;

Georghiades v. The Republic (1981) 3 C.L.R. 431;

Aniliades v. CYTA (1981) 3 C.L.R. 21;

Hadjiconstantinou and Others v. The Republic (1984) 3 C.L.R. 319;

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Myrianthis v. The Republic (1977) 3 C.L.R. 165;

Ionides v. The Republic (1979) 3 C.L.R. 679;

Christofides v. C.Y.T.A. (1979) 3 C.L.R. 99;

Ioannou and Others v. The Republic (1983) 3 C.L.R. 150.

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Recourses.

Recourses against the refusal of the respondents to emplace applicants on Salary Scale A. 5 incremental point 7.

P. Solomonides, for the applicants.

A. Vassiliades, for the respondents.

Cur. adv. vult. 15

SAVVIDES J. read the following judgment. By the above recourses which were heard together as presenting common questions of law and fact the applicants pray for the following relief:

a) A declaration of the Court that the decision and/or refusal of the respondents dated 22nd January, 1987 to emplace the applicants on salary scale A5, incremental point 7, is null and void and of no legal effect.

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b) A declaration that the applicants are entitled to be emplaced

on scale A5, incremental point 7, and the payment of any amount in accordance with the aforesaid scale as from 27th June, 1984.

5 All the applicants prior to the 30th December, 1982 were employed as casual prison wardens. On 30th December, 1982 on a submission made to it by the Minister of Justice, the Council of Ministers decided that 44 of the casual prison wardens who became supernumerous should be absolved gradually to posts which would become vacant either in the Department of Prisons or the Police Force.

10 As a result of the simultaneous operation of the airports of Larnaca and Paphos the appointment of ten Constables became necessary and it was decided with the approval of the Ministry of Finance that ten additional Constables be appointed. As a result of such decision 34 casual Prison Wardens applied for appointment
15 to the said posts which were in fact posts in the Police Force. Out of the ten persons selected for such appointment were the seven applicants who were appointed in the Fire Service on the 27th June, 1984, on the basis of Regulation 7 of the Police General Regulations as temporary officers and were emplaced on scale A3
20 with basic salary £1,190.

On 2nd September, 1986, the applicants informed by letter the Chief of Police that they intended to appoint an advocate to inquire into the matter of their salary scales because, as they alleged, they were previously being paid higher emoluments. The
25 Chief of Police by letter dated 19th September, 1986, brought to the notice of the Director of Public Administration and Personnel Service the applicants' claim, who by letter dated 10th October, 1986, replied that the applicants were rightly placed on scale A3 on the day of their appointment to the post of Police Constable.
30 He concluded his letter as follows:

"In accordance with the policy which is followed on this subject casual employees who are appointed to a post other than the one to which they were serving on a casual basis and with duties which are not the same as the previous ones are

emplaced on the starting point of the scale of their new post. This policy is of general application and a different mode of salary emplacement could not be used in the case of these Police Constables."

The Chief of Police by letter dated 3rd November, 1986, informed the Head of the Fire Service about the position of the applicants with instructions to bring this fact to the notice of the persons concerned. The applicants reverted on the matter by letter of their advocate dated 19th December, 1986, addressed to the Minister of Finance raising once again their claim for emplacement on scale A5, incremental point 7, and for the payment to them of their salaries on such basis as from the date of their appointment. A reply to the above letter was given by letter dated 22nd January, 1987, from the Ministry of Finance signed by the Director of Public Administration and Personnel Service, the contents of which read as follows:

"I have been instructed to refer to your letter dated 19th December, 1986, to the Minister of Finance in connection with the subject of the salary of a number of your clients and to inform you that their case has in the past been considered by the Chief of Police after its submission to our Ministry. Copy of our relevant letter, file No. 6019/68/F/II and dated 10th October, 1986 is attached herewith. Our position continues to be the same as explained in our aforesaid letter.

2. The Minister of Finance regrets he cannot help in their case."

As a result applicants filed on the 9th April, 1987, the present recourses.

By his opposition counsel for the respondents raised the preliminary objection that the present recourses cannot proceed as they were filed out of time. When the case came up for hearing it was agreed that the objection raised should be heard as a preliminary point of law. As a result directions were given for written

addresses to be filed by the parties on the question raised.

5 Counsel for respondents by his written address submitted that the decision which is being challenged by the applicants dated 22nd January, 1987, is merely confirmatory of a previous decision dated 27th June, 1984, whereby the applicants were appointed to their present post. Furthermore he submitted that acceptance by the applicants of their appointment to the aforesaid post unreservedly, has deprived them of any legitimate interest to challenge the sub judice decision.

10 Counsel for the applicants, on the other hand, contended that the applicants were serving as Prison Wardens at the Central Prisons since 1979 (with the exception of applicants in cases Nos. 277 and 278/87 who were so serving since 1981), on scale A5 and they were temporarily transferred and/or seconded to the Fire Service to offer their services temporarily as they were told. As
15 this temporary secondment was extended for a long time they protested by letter dated 19th December, 1986, to which they received on 26th January, 1987, the reply dated 22nd January, 1987, containing the sub judice decision. He submitted further
20 that the recourses were not out of time as the period which elapsed from the date of their appointment till the date they have submitted their protest and received the reply on 26th January, 1987, cannot be treated as a delay on the part of the applicants as they, relying on a promise given to them that they will be transferred back to their previous posts were expecting that the respondents would satisfy their claim.
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From the material before me it seems that the applicants, who were previously casual employees, were offered a permanent appointment on 27th June, 1984, after they had submitted applications and were selected for such purpose in the Fire Service of the
30 Police Force. When accepting such appointment from a casual post to a permanent post the applicants did not make any reservation or raise any protest concerning their emplacement on salary scale A3 and in fact they continued so to serve till the 2nd September, 1986, when for the first time they raised a claim for em-
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placement on salary scale A5.

In has been held time and again by this Court that if a person accepts an administrative act or decision without any protest he no longer possesses a legitimate interest entitling him to file a recourse against it in the sense of Article 146.2 of the Constitution. 5
 Relevant in this respect are, inter alia, the cases of *Neocleous and Others v. The Republic* (1980) 3 C.L.R. 497; *Tomboli v. CY.T.A.* (1980) 3 C.L.R. 266 and on appeal (1982) 3 C.L.R. 149; *Georgiades v. The Republic* (1981) 3 C.L.R. 431; *Aniliades v. CY.T.A.* (1981) 3 C.L.R. 21 and the Full Bench decision in *Hadjiconstantinou & Others v. The Republic* (1984) 3 C.L.R. 319. 10

The following passage from the judgment of Triantafyllides, P., in the case of *Myriantthis v. The Republic* (1977) 3 C.L.R. 165 at p. 168 has been adopted in a number of cases including *Tomboli v. CY.T.A.* (supra) both by the first instance Judge and by the Full Bench on appeal: 15

"It is well established, by now, in the administrative law of Cyprus, on the basis of relevant principles which have been expounded in Greece in relation to a legislative provision there (section 48 of Law 3713/1928) which corresponds to our Article 146.2 above, that a person, who, expressly or impliedly, accepts an act or decision of the administration, is deprived, because of such acceptance, of a legitimate interest entitling him to make an administrative recourse for the annulment of such act or decision." 20 25

As to the acceptance of an administrative act or decision with reservation of rights it was held in *Ionides v. The Republic* (1979) 3 C.L.R. 679, that such acceptance does not deprive the acceptor of his legitimate interest. (See, also, in this respect *Christofides v. CY.T.A.* (1979) 3 C.L.R.99; *Ioannou & Others v. The Republic* (1983) 3 C.L.R. 150). 30

Bearing in mind the above principles and having taken into

consideration the fact that the applicants had accepted freely and unconditionally their appointments in which their salary scales were explicitly set out and although they had been appointed to their posts a long time before their recourses i.e. on the 27th
5 June, 1984, and were receiving their salaries regularly they never protested or raised the issue till September, 1986, I have come to the conclusion that they have no legitimate interest to pursue their recourses and even if such legitimate interest might have existed at any time it has been lost by the expiration of more than 75 days
10 from the date when their first salary was paid to them.

As to the contents of the letter dated 22nd January, 1987, I agree with the submission of counsel for the respondents that its contents are merely of an informatory character and/or confirmatory of the contents of a previous letter dated 10th October, 1986,
15 which was brought to the notice of the applicants through the Head of their department.

In the result these recourses fail and are hereby dismissed but in the circumstances I make no order for costs.

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*Recourse dismissed.
No order as to costs.*