

1988 September 8

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ALEXANDROS E. SKOUFARIS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 278/86).

*Recourse for annulment—Abatement—Revocation of the sub judice act—
When and in what circumstances the recourse is abated—Whether Court
has power to examine incidentally the validity of the revocation—Question
determined in the affirmative*

Public Officers—Promotions—Revocation of, for purpose of reconsideration—As there is no vested right to promotion and an annulment leads only to reconsideration of the matter, the revocation extinguishes the act ab initio without causing any damage. 5

Composite administrative act—Invalidity of intermediate act—Leads to annulment of final act—Therefore, promotions of officers should be annulled, if the confidential reports were invalid. 10

The facts of this case appear sufficiently from the judgment of the Court.

Recourse dismissed.

No order as to costs. 15

Cases referred to:

Ioannou v. E.A.C. (1981) 3 C.L.R. 280;

Christofides v. The Republic (1985) 3 C.L.R. 1127;

Christodoulides v. The Republic (1978) 3 C.L.R. 189;

Hapeshis v. The Republic (1979) 3 C.L.R. 550;

Kitou and Others v. The Republic (1983) 3 C.L.R. 605;

5 *Agrotis v. The Republic* (1983) 3 C.L.R. 1397;

Payiatis v. The Republic (1984) 3 C.L.R. 1239;

Nicolaidis v. The Republic (1987) 3 C.L.R. 9;

Valiantis and Others v. The Republic (1987) 3 C.L.R. 151;

Irrigation Division "Katzilos" v. The Republic (1983) 3 C.L.R. 1068.

10 **Recourse.**

Recourse against the decision of the respondent to promote the interested parties to the post of Examiner of Accounts, 1st Grade in preference and instead of the applicant.

G. Michanikos, for the applicant.

15 *A. Papasavvas*, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

20 STYLIANIDES J. read the following judgment. The applicant by this recourse seeks the annulment of the promotion of the three interested parties to the post of Examiner of Accounts, 1st Grade, in preference to him.

The first ground on which he relied is that the confidential reports were invalid, as there was a failure to conform with the pro-

visions of the Regulations and materially affected adversely his interest.

The confidential reports are only independent intermediate parts of the wider composite administrative action, promotion. They merge in the final act, and though they cannot be the subject of a recourse, as they are not by themselves of executory character, nevertheless being a legal prerequisite to such final act, their invalidity, if any, renders all acts which follow, including the final concluded act, null and void, as the invalidity of part of a composite administrative action leads to the invalidity of the final act, because the component acts of the action in their nature are not separate and independent of each other - (*Dinos N. Ioannou v. The Electricity Authority of Cyprus* (1981) 3 C.L.R. 280, at p. 299; *Christofides v. Republic* (1985) 3 C.L.R. 1127). 5 10

The second ground is that no due inquiry was carried out with regard to the qualifications required by the scheme of service. It was further contended that the applicant is strikingly superior to the interested parties, promotees. 15

Counsel for the Respondents in the course of the hearing of this recourse, after consideration, advised them in writing. 20

The Respondent Commission met on 19th May, 1988 and revoked the sub judice decision, the promotion of the three interested parties. By letter dated 26th May, 1988, they brought this to the knowledge of the Attorney-General. In the said letter it is stated that the Commission shall reexamine the matter of the filling of the three posts, which, due to the aforesaid revocation, are vacant, after the Attorney-General and the Supreme Court are informed of the revocation. 25

The question that falls for decision is whether this recourse has been abated and it cannot be further prosecuted. 30

The revocation of the sub judice decision is an admission of its invalidity, at least on one of the grounds set up by the applicant in

his recourse. Following that, the recourse is abated; if it is deprived of its subject matter. Revocation of an administrative act normally results in the abatement of the recourse, unless damaging effects have resulted to the applicant, which are not extinguished by the revocation of the challenged act - (*Christodoulides v. The Republic* (1978) 3 C.L.R. 189; *Hapeshis v. Republic* (1979) 3 C.L.R. 550, 560; *Kittou and Others v. Republic* (1983) 3 C.L.R. 605; *Agrotis v. Republic* (1983) 3 C.L.R. 1397; *Payiata v. Republic* (1984) 3 C.L.R. 1239, 1246; *Nicolaidis v. Republic* (1987) 3 C.L.R. 9; *Valiantis and Others v. Republic* (1987) 3 C.L.R. 151).

In our country it is settled that only a successful applicant in a recourse, seeking redress under Article 146 of the Constitution, is entitled to seek just and equitable damages, under Article 146.6.

Irrespective, therefore, of the revocation of an administrative act or decision, when during the existence of such act and before its revocation adverse consequences have resulted to an applicant in a recourse, such applicant is entitled to have his recourse determined so as to enable him to seek compensation under Article 146 of the Constitution - (*Irrigation Division "Katzilos" v. The Republic* (1983) 3 C.L.R. 1068 at p. 1081; *Payiata v. Republic* (supra)):

The recourse remains without subject matter only if the challenged decision is extinguished ab initio, from the beginning, without causing any damage. Furthermore, the revocation must be valid in all respects and this Court has power to incidentally review the validity of such revocation, otherwise, if the act of revocation is annulled later on by the Court, the applicant will remain without a remedy as the original act, which revives, will not be possible to be challenged by a new recourse which at any rate will be out of time.

In the Application For Annulment Before The Council Of State by Tsatsos, 3rd edition, at p. 373 we read the following:

"Ίνα διά της ανακλήσεως ή ενδεχομένως της καταργή- 5
 σεως της προσβαλλομένης πράξεως αποβή πράγματι άνευ
 αντικειμένου η αίτησις ακυρώσεως, απαιτείται προσέτι
 απαραίτητως η, περί ης πρόκειται, ανάκλησις ή κατάργη-
 σις να είναι καθ' όλα έγκυρος, του Συμβουλίου της Επι- 10
 κρατείας δικαιουμένου να εξετάση τούτο παρεμπιπτόν-
 τως. Άλλως ο αιτών, ακυρουμένης τυχόν βραδύτερον της
 ανακλητικής ή της καταργητικής πράξεως υπό του Συμ-
 βουλίου της Επικρατείας, ήθελεν ενδεχομένως ευρεθή προ
 δικονομικού αδιεξόδου, δοθέντος ότι η μεν πράξις εκτελέ-
 σεως της - μετά την ακύρωσιν της ανακλήσεως ή καταργή- 15
 σεως - αυτοδικαίως αναβιωσάσης πράξεως, καθ' ης αρχι-
 κώς είχε προσφύγει, ως πράξις εκτελέσεως δεν θα είναι
 προσβλητή, η δε πράξις, καθ' ής είχε αρχικώς προσφύγει,
 δεν θα είναι πλέον δυνατόν να προσβληθή λόγω παρόδου
 της προθεσμίας." 20

The decision of revocation in the present case was taken on
 19th May, 1988. The peremptory period under paragraph 3 of
 Article 146, within which a recourse challenging such revocation
 may be filed by any of the interested parties, has elapsed.

The annulment of the sub judge decision by the Court would 25
 not give any right to the applicants for any redress, under Article
 146.6, because there is no vested right to promotion as such, and
 the annulment of the promotions of the interested party would not
 automatically have led to the promotion of the applicant instead.
 After annulment the Public Service Commission has to examine 30
 the matter afresh on the basis of the legal and factual situation at
 the time the annulled decision was taken. This the Commission is
 intending to do in the present case. The revocation of the 19th
 May, 1988 extinguished the sub judge decision.

In view of the foregoing, the recourse has been abated and is 35
 hereby struck out.

Let there be no order as to costs.

*Recourse struck out as abated.
 No order as to costs.*