

1988 September 13

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

1. STAVROS KYPRIANOU,
2. KYRIACOS PAPASTAVROU;

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF INTERIOR,
2. THE COMMANDER OF POLICE,

Respondents.

(Case No. 390/86).

Police Force—Promotions—Allegation that applicants were wrongly not promoted for reasons of loyalty—As applicants did not adduce any evidence in support of such allegation, the recourse has to be dismissed.

5 *Evidence—Absence of evidence in support of a material allegation put forward by the applicants in a recourse challenging promotions in the Police Force—Effect.*

10 *Legitimate interest—Promotions in the Police Force made after comparison of candidates—Whether applicants' subsequent promotion to post in question deprives them of legitimate interest to challenge the validity of the earlier promotions—Question determined in the negative.*

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

Recourse dismissed.

No order as to costs.

Recourse.

Recourse against the decision of the respondents to promote the interested parties to the rank of Sergeant in the Fire Service in preference and instead of the applicants.

A. *Ladas*, for the applicants.

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A. *Vassiliades*, for the respondents.

Cur. adv. vult.

A. LOIZOU P. read the following judgment. By the present recourse which was taken over by me on the 19th March, 1988, the applicants seek a declaration of the Court that the decision of the respondents which was published in the Police Weekly Orders (Part II, No. 195) of the 7th April 1976, to promote to the rank of Sergeant in the Police Fire Service as from the 1st May 1979, the eleven interested parties, namely P. Karatjias, K. Panayides, G. Pisharas, S. Sophocleous, A. Theodorou, N. Andreou, Chr. Schizas, N. Georghiou, K. Pamboris, G. Papageorghiou and A. G. Nicolaou, is null and void and of no legal effect whatsoever.

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The background to the present recourse is briefly as follows:

The Supreme Court by means of its judgment in recourses Nos. 245/81 and 246/81, reported as *Tsangarides v. The Republic* (1984) 3 C.L.R. 1525 annulled the promotions to the rank of Sergeant of eleven persons who are the interested parties in the present proceedings because the Chief of Police in effecting such promotions "took into account information leading him to the conclusion that the personal reputation of the applicants had been diminished because of their behaviour during the abortive coup d'etat of the 15th July 1974; and it is quite clear that this factor was an essential and decisive reason for deciding not to promote the applicants." The Court concluded that "the applicants were excluded from consideration for purposes of promotion in a manner

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contrary to the rules of natural justice and, consequently, the sub-judice promotions of the interested parties - instead of the applicants - have to be annulled."

5 As a result of a subsequent re-examination, the Chief of Police promoted the present interested parties, with the approval of the Minister of Interior, under Section 13 of the Police Law, Cap. 285 (as amended by the Police (Amendment) Law, 1966, Law No. 29 of 1966) retrospectively as from 1st May, 1979.

10 Before dealing with the arguments as put forward by the applicants, I have to dispose of first the preliminary objection put forward by the respondents to the effect that the applicants lacked the necessary legitimate interest to challenge the promotions of the interested parties, since, the applicants, had been subsequently promoted to the same post themselves, had therefore lost their legitimate interest and could only challenge the decision to promote the
15 interested parties retrospectively.

I consider, however, that the mere fact of the promotion of the interested parties instead of the applicants is sufficient to create for them the necessary legitimate interest.

20 On behalf of the applicants it was submitted that they are strikingly better to the interested parties and more so in view of the fact that they had been strongly recommended for promotion by the Chief Fire Officer and also recommended for immediate promotion by the Selection Board.

25 It was further contended that the applicants were wrongly not promoted for reasons of loyalty, since in the Evaluation Report (Δελτίον Αξιολογήσεως) both applicants ranked better to the interested parties.

30 From a perusal of the sub-judice decision it does not appear anywhere therein that the Chief of Police took into consideration any material concerning either their loyalty or their personal reputation. In particular it is stated in his letter dated 27th February

1986, to the Minister of Interior, requesting his approval for the promotions that:

"... having consulted the recommendations of the Chief Fire Officer and the suggestions of the Promotions Board and studied the personal files concerning the matters related to the promotions, that is merit, qualifications, seniority, I considered the following as the most suitable of all and I have decided by virtue of the discretion vested in me by section 13(2) of the Police Law to promote them to the rank of Sergeant as from the 1st May, 1979, ..."

In the absence of any evidence on behalf of the applicants to substantiate such allegation of their, this ground must necessarily fail.

As far as the question of striking superiority is concerned, none has been established and the fact that the applicants may be slightly better rated in the Evaluation Report (Δελτίο Αξιολογήσεως), even if it could render them slightly better, nonetheless does not make them strikingly superior.

For the reasons stated above, I find that the sub judice decision was rightly and properly reached and in accordance with the provisions of the Law and after a proper exercise of discretion. The recourse fails and is hereby dismissed, with no order as to costs.

*Recourse dismissed.
No order as to costs.*