

1988 February 29

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS MICHAELIDES,

*Applicant,*

v.

- 1. THE DIRECTOR OF PUBLIC ADMINISTRATION  
AND PERSONNEL,
- 2. THE PUBLIC SERVICE COMMISSION,

*Respondents.*

*(Case No. 88/87).*

*General principles of administrative law—Powers to defer promotion of a public officer pending disciplinary proceedings against him—Applicable mutatis mutandis to cases of permanent appointment in the Public Service—The Casual Public Officers (Appointments to Public Offices) Law, 1985 (Law 160/85), section 3—Whether it excludes aforesaid principle.*

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*Public Officers—Appointments—The Casual Public Officers (Appointments to Public Offices) Law, 1985 (Law 160/85) section 3—Implications of.*

The applicant impugns by means of this recourse the decision to postpone the taking of a decision in respect of applicant's permanent appointment in the Public Service under the Casual Public Officers (Appointment to Public Offices) Law, 1985 (Law 160/85) until completion of a disciplinary case pending against him.

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Counsel for applicant submitted that section 3 of Law 160/85 does not empower the Commission to act as aforesaid, whereas counsel for the respondent suggested that the case Law of the Greek Council of State concerning promotions of Public Officers justified the course taken by the Commission.

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Held, *dismissing the recourse*:(1) The general principles of administra-

tive law referred to in a passage from the Conclusions from the Case Law of the Greek Council of State 1929-1959 at pp. 352-353 in respect of promotions in the Public Service are mutatis mutandis applicable to cases of permanent appointment like the case in hand.

5 (2) It follows that the Administration is entitled to defer the taking of a decision to appoint, if there is pending "disciplinary charge" against the officer concerned.

10 (3) Section 3 of the Law permits deviation from the provisions of the Public Service Laws 1967 to 1981 and any other Law relating "to the methods and procedures for the filling of posts" but such appointments according to subsection 2 paragraph (b) of section 3 thereof are subject to the possession by the person to be appointed of the qualifications required by the Scheme of Service for the post as well as the other qualifications that are required by the Public Service Laws for appointment to the public service.

15 Such other qualifications are set out in section 33 of the Public Service Law and include, inter alia, the requirement that the person to be appointed is of good character (paragraph (d) ), has not been convicted of an offence of dishonesty or involving moral turpitude (paragraph (e) ) and has not been previously dismissed from the public service for a disciplinary offence (paragraph (f) ).

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*Recourse dismissed.*

*No order as to costs.*

### **Recourse.**

25 Recourse against the decision of the respondent to postpone the taking of a decision in respect of the appointment of applicant, a casual employee, to a permanent post in accordance with the provisions of the Casual Public Officers (Appointment to Public Offices) Law, 1985 (Law No. 160 of 1985) until the completion

30 of the disciplinary case pending against him.

*C. Clerides*, for the applicant.

*A. Vladimirov*, for the respondent.

*Cur. adv. vult.*

A. LOIZOU J. read the following judgment. Upon the enact-

ment of the Casual Public Officers (Appointment to Public Offices) Law 1985, (Law No. 160 of 1985),—hereinafter to be referred to as the Law—the Director of Public Administration and Personnel Service prepared and forwarded to the respondent Commission lists of officers serving in the Public Service on a casual basis and who has been so serving both on the 31st December 1984 and the 31st October 1985 when the aforesaid Law was enacted. 5

The respondent Commission asked from all Heads of Departments to see that all casual officers working under them completed Form Gen. 6 and submitted them to it after ascertaining that all paragraphs in the said Form were duly filled in and there were also attached the required by the Scheme of Service for the post, certificates and testimonials. The heads of Department were further asked before forwarding the said Forms, to examine whether each casual officer in question satisfied those requirements of the Scheme of Service which could not possibly be ascertained by the respondent Commission from the attached certificates and testimonials. For example good/very good knowledge of English/other language, administrative ability, judgment initiative, responsibility, maturity, reliability, etc. and inform the respondent Commission accordingly together with the submission of the relevant application Forms. 10 15 20

The Head of the Department of the applicant informed the respondent Commission that an inquiry was being carried out against him for the possible commission of a disciplinary offence. The Director of the Department of Public Administration and Personnel Service, also informed the respondent Commission that an investigating officer had been appointed already to carry out an inquiry into the possible commission of a disciplinary offence (Appendices 3, 4, and 5). 25 30

The respondent Commission at its meeting of the 3rd March, 1986, considered the question of the appointment of a number of casual officers among whom there was the applicant and after it decided that forty of them possessed the qualifications required 35

for the post under the relevant Scheme of Service and that they were suitable for appointment decided to offer them in accordance with the provisions of the Law appointment with retrospective effect as from the 8th November 1985. As regards the applicant the respondent Commission postponed the taking of a decision until the completion of the disciplinary case pending against him. (Appendix 6).

It is the case for the applicant that in taking the sub judice decision the respondent Commission acted contrary to section 3 of the Law which does not give to it the right not to appoint on a permanent basis a casual officer for any reason including the fact that there was pending a disciplinary investigation against him having no discretion in the matter. The respondent Commission, it was further urged, ought to appoint the applicant permanently and after the completion of the disciplinary case against him and on being found guilty, to take the necessary disciplinary measures against him on the basis of such conviction.

It is the case for the respondent Commission that it acted properly and in accordance with the Law when postponing the taking of a decision for the appointment of the applicant to the permanent post of messenger retrospectively from the 8th November 1985, until the completion of the disciplinary case against him.

Reliance in that respect is based on the following passage from the Case Law of the Greek Council of State 1929-1959 at pp. 352-353, where the following is said:

" Εξ άλλου η νομολογία, προ της θέσεως εν ισχύι των ανωτέρω διατάξεων του Υπαλ. Κώδικος, είχε δεχθή ότι η Διοίκησης, υποχρεουμένη να λαμβάνη υπ' όψιν και σταθμίζη προς μόρφωσιν γνώμης περί της προαγωγής υπαλλήλου πάντα τα περί της υπηρεσιακής ικανότητας και υπαλληλικής ποιότητας υπάρχοντα περί αυτού στοιχεία, νομίμως αναβάλλει την κρίσιν, όταν υφίσταται εκκρεμής εις βάρος του υπαλλήλου κατηγορία, εφ' όσον κρίνει ότι η κατηγορία αυτή, βάσιμος τυχόν αποδεικνυομένη, θέλει

επηρεάσει την περί προαγωγής αυτού κρίσιν: 673 (52), 18 (50), 1617 (49), 228(47), 1136 (46) *ιδε και* 1694, 1962 (52), 59 (47). Η τοιαύτη αναβολή χωρεί νομίμως μόνον εφ' οσον κατά την έκδοσιν της τε γνωμοδοτήσεως του υπηρεσιακού συμβουλίου και του περί προαγωγής διατάγματος υφίσταται πράγματι εκκρεμής εις βάρος του υπαλλήλου κατηγορία: 139, 1269 (48). Δεν απαιτείται όμως όπως ούτος έχει παραπεμφθή (να δικασθή ή έχη δικασθή ή έχη κληθή εις απολογία, αλλ' εναπόκειται εις την κρίσιν της Διοικήσεως να εκτιμήση αν τα εν τω φακέλλω του υπαλλήλου υπάρχοντα στοιχεία είναι αρκούντως σοβαρά, (να δικαιολογήσωσι την αναβολήν της κρίσεως αυτού: 673(52) *ιδε και* 786 (48). Εγένετο επίσης δεκτόν ότι εκκρεμής πειθαρχική δίωξις δικαιολογεί μεν την αναβολήν της περί του υπαλλήλου κρίσεως, δεν δύναται όμως να στηρίξει δυσμενή ουσιαστικήν κρίσιν περί του ευδοκίμου της υπηρεσίας του: 1382(55), 927 (52).

Αποδεικνυομένης εκ των υστέρων αβασίμου της κατηγορίας, ο υπάλληλος δέον να τεθή υπό κρίσιν προς προαγωγήν, κρινόμενος δε προακτέος να προαχθή αναδρομικώς αφ' ης θα είχε προαχθή αν μη αναβάλλετο η κρίσις, και δη αφ' ης προήχθησαν οι μεθ'ων ούτος θα εκρίνετο ομοιόβαθμοι αυτού: 413 (56), 1954 (52), 18 (50), 1517 (49), *ιδε και* 857 (39)"....., κ.λ.π.

In English it reads:

"On the other hand the Case Law, before the coming into force of the aforesaid provisions of the Civil Servants Code, had accepted that the Administration being bound to take into consideration and weigh, in order to form an opinion regarding the promotion of an officer every existing material relating to his service ability and service quality, it lawfully postpones its decision when there exists a pending charge against the officer, once it considers that in case the charge is reliably proved it might influence its judgment about his promotion: 673 (52), 18 (50), 1617 (49), 228 (47), 1136 (46) see also

1694, 1962 (52), 59 (47). Such postponement is legally permissible only when at the time of the issue of the opinion of the Service Council and the order for promotion there really exists against the officer a charge: 1139, 1269 (48). It is not  
5 necessary, however, that he should have been committed for trial or that he has been tried or that he has been called upon to make his defence but it is within the discretion of the administration to evaluate if the existing material in the file of the officer is sufficiently serious to justify the postponement of its decision. 673(52) see also 786 (48). It has also been accepted  
10 that a pending disciplinary prosecution, justifies the postponement of the decision about the officer, but it cannot, however, support an adverse substantive decision about the satisfactory nature of his service: 1382 (55), 927 (52).

15 If subsequently the charges are proved unfounded the officer must be considered for promotion, and if he is found suitable for promotion, to be promoted retrospectively as from when he would have been promoted had the decision not been postponed and particularly since the time other officers of the same rank with him were promoted."  
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It has been argued by learned counsel for the applicant that the aforesaid principles apply only to cases of promotion and not to cases of permanent appointment effected under the Law and that its provisions exclude them.

25 On the totality of the circumstances before me and in the light of the wording of the relevant sections of the Law I have come to the conclusion that the aforesaid general principles of Administrative Law apply mutatis mutandis to cases of permanent appointment as in the case in hand; otherwise apart from amounting to disregard of the law there would be multiplicity of proceedings  
30 leading to absurd results. The Administration is entitled to defer the taking of a decision to appoint, if there is pending "disciplinary charge" against the officer concerned.

*Section 3 of the Law permits deviation from the provisions of*

the Public Service Laws 1967 to 1981 and any other Law relating "to the methods and procedures for the filling of posts" but such appointments according to subsection 2 paragraph (b) of section 3 thereof are subject to the possession by the person to be appointed of the qualifications required by the Scheme of Service for the post as well as the other qualifications that are required by the Public Service Laws for appointment to the public service. Such other qualifications are set out in section 33 of the Public Service Law and include, inter alia, the requirement that the person to be appointed is of good character (paragraph (d) ), he has not been convicted of an offence of dishonesty or involving moral turpitude (paragraph (e)) and he has not been previously dismissed from the public service for a disciplinary offence, (paragraph (f) ).

For all the above reasons the recourse is dismissed but in the circumstances there will be no order as to costs.

*Recourse dismissed.  
No order as to costs.*