

[TRIANTAFYLIDIS, J.]
IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

CHRISTOS KYTHREOTIS

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 87/64)

1965
Jan. 1,
Aug. 31
—
CHRISTOS
KYTHREOTIS
and
THE REPUBLIC
OF CYPRUS,
THROUGH
THE PUBLIC
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Administrative Law—Public Officers—Salary scales—Administrative action taken in relation to Applicant's complaint against the mode of his emplacement on salary scale after his promotion—Action an executory one and not merely execution or implementation of the decision to promote Applicant—Therefore, subject to the competence in Article 146.1.

Public Service Commission—Competence of Chairman—Article 125.2 of the Constitution—Applicant's complaint concerning his salary scale after promotion not within Chairman's competence acting alone—Action annulled as being in excess of powers.

Applicant complains against the mode of his emplacement on the salary scale of Bailiff and Process Server 1st Grade.

Applicant being a Bailiff and Process Server, 2nd Grade, was, by decision of the Public Service Commission of the 8th April, 1964, promoted to Bailiff and Process Server, 1st Grade, as from the 1st May, 1964. He was informed of the promotion by a letter dated the 9th April, 1964. It was stated therein that he would "enter the salary scale of the post at £426 per annum" and would be eligible to draw £450 per annum on the 1st May, 1965.

At the time Applicant was already receiving £426 per annum as a Bailiff and Process Server, 2nd Grade, the two grades having a combined salary scale as follows:
£264x18—426 (2nd Grade) 354x18x426x24—522 (1st Grade).

He wrote back on the 14th April, 1964, claiming that he was eligible to draw a salary of £450 per annum as from

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the 1st May, 1964, instead of the 1st May, 1965. He otherwise accepted his promotion.

He received a letter of the Chairman of the Commission dated the 30th April, 1964, wherein it was stated that his emplacement on the salary scale with £426 per *annum* had been correctly made under the provisions of Colonial Regulation 37 (iii) and his request could not therefore, be acceded to.

Applicant replied on the 11th May, 1964, alleging that the said Regulation did not apply to his case and drawing attention to the fact that another Bailiff and Process-Server, 2nd Grade, a certain Mr. Djemal, on promotion to 1st Grade, had been granted a salary of £450 per annum.

His claim was turned down by a letter of the Chairman of the Commission of the 27th June, 1964, which reiterated that Regulation 37 had been correctly applied.

This recourse was filed on the 13th July, 1964.

The issue has arisen during the hearing whether or not this recourse is out of time under Article 146(3).

Held, I. On whether or not this recourse is out of time.

(a) What actually Applicant challenges by this recourse is the whole process of administrative action taken in relation to his emplacement right up to the letter of the Commission's Chairman of the 27th June, 1964. Applicant, in effect, has moved for reconsideration of the question of his emplacement and the outcome is contained in the letters to Applicant of the 30th April, and 27th June, 1964. This recourse is, therefore, in time under Article 146(3) as it was filed within seventy-five days thereafter.

II. On the validity of the acts or decisions turning down Applicant's claim.

(a) Applicant's complaint was not a matter within the competence of the Commission's Chairman acting alone. The Chairman's powers as expressly laid down in Article 125(2) do not cover such an eventuality and no specific legislative provision or even decision of the Commission has been relied upon before this Court as conferring competence on the Chairman to deal with this matter by himself. It was a complaint addressed to the Commission.

It had to be placed before it and to be considered by it.

(b) As Applicant's complaint was never dealt with by competent authority it remains pending and has to be dealt with the soonest possible. In the meantime the administrative action taken in relation thereto by the Commission's Chairman is hereby annulled as being in excess of powers.

III. As regards costs :

Applicant is entitled to part thereof which I assess at £10.-

Judgment accordingly.

Cases referred to:

Morsis and The Republic (4 R.S.C.C. 133 at p. 137).

Recourse.

Recourse against the decision of the respondent to emplace applicant at the salary of £426 per annum in the post of Bailiff and Process Server 1st Grade in the Judicial Department instead of £450 per annum.

L.N. Clerides for the applicant.

K.C. Talarides, Counsel of the Republic, for the respondent.

Cur. adv. vult.

The facts of this case sufficiently appear in the following judgment of:

TRIANTAFYLLIDES, J.: In this Case the Applicant complains against the mode of his emplacement on the salary scale of Bailiff and Process Server 1st Grade.

Applicant being a Bailiff and Process Server, 2nd Grade, was, by decision of the Public Service Commission of the 8th April, 1964, promoted to Bailiff and Process Server, 1st Grade, as from the 1st May, 1964. He was informed of the promotion by a letter dated the 9th April, 1964. It was stated therein that he would "enter the salary scale of the post at £426 per annum" and would be eligible to draw £450 per annum on the 1st May, 1965.

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At the time Applicant was already receiving £426 per annum as a Bailiff and Process Server, 2nd Grade, the two grades having a combined salary scale as follows:— £264X18—426 (2nd Grade) 354x18—426x24—522 (1st Grade).

He wrote back on the 14th April, 1964, claiming that he was eligible to draw a salary of £450 per annum as from the 1st May, 1964, instead of the 1st May, 1965. He otherwise accepted his promotion.

He received a letter of the Chairman of the Commission dated the 30th April, 1964, wherein it was stated that his emplacement on the salary scale with £426 per annum had been correctly made under the provisions of Colonial Regulation 37(iii) "and your request cannot, therefore, be acceded to".

Applicant replied on the 11th May, 1964, alleging that the said Regulation did not apply to his case and drawing attention to the fact that another Bailiff and Process Server, 2nd Grade, a certain Mr. Djemal, on promotion to 1st Grade, had been granted a salary of £450 per annum.

His claim was turned down by a letter of the Chairman of the Commission of the 27th June, 1964 which reiterated that Regulation 37 had been correctly applied.

This recourse was filed on the 13th July, 1964.

The issue has arisen during the hearing whether or not this recourse is out of time under Article 146(3).

In this respect it is necessary to bear in mind certain relevant facts, which are not in dispute:—

By the aforesaid decision of the 8th April, 1964, the Commission did not decide expressly regarding the emplacement of Applicant on the relevant salary scale. This was dealt with subsequently by its Secretariat in giving effect to the promotion of Applicant.

The subsequent complaint of Applicant against such emplacement, as contained in his letter of the 14th April—and reiterated by his letter of the 11th May, 1964—was never decided upon by the Commission but was dealt with by its Chairman only. Counsel for the Respondent has very fairly confirmed this; in any case the Court would have been led to drawing such an inference from the fact that the only rele-

vant minutes of the Commission which were available were those of the 8th April, 1964.

Had Applicant's recourse been made, in effect, only against his emplacement on the salary scale, as communicated to him on the 9th April, 1964, then it would have been out of time as having been filed more than seventy-five days thereafter. But there is more in the matter than that. Such emplacement was effected at first in a routine manner by the Commission's Secretariat and then Applicant complained to the Commission, through its Chairman, that such emplacement was not correct and, by later on referring to the case of Mr. Djemal, he clearly raised, *inter alia*, a question of equal treatment with another officer in similar circumstances.

So what actually Applicant challenges by this recourse is the whole process of administrative action taken in relation to his emplacement right up to the letter of the Commission's Chairman of the 27th June, 1964. Applicant, in effect, has moved for reconsideration of the question of his emplacement and the outcome is contained in the letters to Applicant of the 30th April and 27th June, 1964. This recourse is, therefore, in time under Article 146(3) as it was filed within seventy-five days thereafter.

The administrative action taken, down to the 27th June, 1964, in relation to Applicant's complaint about his emplacement is, in my opinion, executory action of the administration, subject to the competence under Article 146(1), and not merely execution or implementation of the decision to promote him, which had been taken previously by the Public Service Commission. I take this view in the particular circumstances of this Case because the Applicant having complained in the matter of his emplacement and having raised, *inter alia*, a question of equal treatment in claiming that he was entitled to a higher salary emplacement, the relevant administrative action taken in relation thereto amounts to action productive of consequences for the legal situation of Applicant, in that his claim to a higher initial salary was turned down.

The next issue to be gone into is the validity of the acts or decisions turning down Applicant's claim.

The matter, as stated, was not dealt with by the Public Service Commission. It was dealt with only by the Chairman thereof.

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I have not found it necessary for the purposes of this Case to decide whether the Commission could deal with the question raised by Applicant, concerning his salary, within its exclusive competence or whether the concurrence of any other authority such as the Minister of Finance would have been required. It suffices to say, for the purposes of this recourse, that I am of the opinion that Applicant's complaint was not a matter within the competence of the Commission's Chairman acting alone. The Chairman's powers as expressly laid down in Article 125(2) do not cover such an eventuality and no specific legislative provision or even decision of the Commission has been relied upon before this Court as conferring competence on the Chairman to deal with this matter by himself. It was a complaint addressed to the Commission. It had to be placed before it and to be considered by it. Moreover, it was not a matter of automatic application of a particular provision so that it might be argued that there was no possibility left to the Commission to exercise any discretion; on the contrary, the Commission might have decided, as it was entitled to do, that it was not proper to follow, in the special circumstances of this Case, Regulation 37, even if found by it to be otherwise relevant, because, as held also in *Morsis and the Republic* (4 R.S.C.C. p.133 at p. 137) the Colonial Regulations have not continued in force under Article 188 but *may* be acted upon by way of established practice in cases where they regulate *purely Administrative or procedural matters*; the Commission would also have had to examine why the aforementioned Mr. Djemal had been accorded different treatment and if, in the circumstances, Applicant was entitled to such treatment also.

As Applicant's complaint was never dealt with by competent authority it remains pending and has to be dealt with the soonest possible. In the meantime the administrative action taken in relation thereto by the Commission's Chairman is hereby annulled as being in excess of powers.

Regarding costs I feel that Applicant is entitled to part thereof which I assess at £10.-

Judgment and order as to costs accordingly.