[TRIANTAFYLLIDES, J.]

1965
May 27,
June 19,
Oct. 22, 29,
1966
Jan. 22,
Feb. 1, 26

—

MICHALAKIS IACOVIDES
and
THE REPUBLIC OF CYPRUS THROUGH THE DISTRICT OFFICER

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MICHALAKIS IACOVIDES,

Applicant,

and

THE REPUBLIC OF CYPRUS THROUGH THE DISTRICT OFFICER, LIMASSOL,

Respondent.

(Case No. 324/62).

Administrative Law—Municipal Employees—Municipal Corporations Law, Cap. 240, sections 67(1)(4) and 69(2)—Respondent's failure to take action under sections 67(4) and 69(2) of the Law in relation to Applicant's salary—Respondent guilty of a continuing omission to exercise his relevant statutory powers—Moreover Respondent has acted under the basic misconception of Law that not only the salary of Applicant but also his appointment were subject to Respondent's approval.

Editor's note: This case is in all material respects quite similar to case 322/62 (reported in this Part at p. 153 ante) as the applicant in this case was held entitled to succeed for those of the reasons given in that case, which are applicable, *mutatis mutandis* to this case. Therefore the rubric and head-note of that case are applicable to this case too. It is reported because in the present case there is an additional reason why judgment was given in favour of applicant viz. that Respondent appears, from the relevant correspondence, to have acted under the basic misconception of law that not only the salary of Applicant, but also his appointment, were subject to Respondent's approval; on the face of the relevant provisions this is clearly not so, as Applicant's post is not one of those earmarked by section 67(1).

Declaration that omission complained of ought not to have been made; and whatever has been omitted by respondent in this respect,

should have been performed.

Cases referred to:

Yiannakis Georghiades and others v. Dictrict officer Limassol, (1965) 3 C. L. R. 356;

Yiannakis Georghiades and the Republic (reported in this Part at p. 153 *ante*);

Kyriakides and The Republic 1 R.S.C.C. 66 at p. 77.

Recourse.

Recourse against the failure of respondent to take appropriate action under sections 67(4) and 69 of the Municipal Corporations Law, Cap. 240, in relation to applicant's salary as Surveyor of Health (or Town Surveyor) of the Limassol Municipality.

Chr. Demetriades for the Applicant.

A. Frangos, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following order and judgment were delivered by TRIANTAFYLLIDES, J.:—

As this recourse has not been, and could not have been, brought against the District Officer personally, but against him as an organ of the Republic exercising executive or administrative authority, in the sense of Article 146, it is hereby directed that the description of Respondent should be treated as amended to read:—

"The Republic of Cyprus through the District Officer, Limassol".

I am satisfied that this amendment is a necessary one for the sake of proper form and the interests of justice in general, and ordering it at this stage does not prejudice either party to this recourse in any way.

In this recourse the Applicant complains, in effect, against the failure of respondent to take appropriate action under sections 67(4) and 69 of the Municipal Corporations Law, Cap. 240, in relation to his salary as Surveyor of Health (or Town Surveyor) of the Limassol Municipality.

The aforesaid provisions of Cap. 240 have been operative at all material times, by virtue of, *inter alia*, the Municipalities Laws (Continuation) Law 1961 (Law 10/61)—and subsequent Laws extending the operation of Law 10/61—as well as, the Municipalities Law, 1964, (Law 64/64).

The salient relevant facts are as follows:—

On the 24th November, 1960, the then Greek Municipal Council of Limassol appointed Applicant to the aforementioned post as from the 1st December, 1960, and requested in writing, on the 25th November, 1960 *(exhibit 1)*, the Respondent to approve the salary of Applicant under sections 67 and 69 of Cap. 240.

Under sub-section (4) of section 67 salaries of certain principal municipal officers require the approval of the District Officer.

Under section 69(2) the provisions of, *inter alia*, sub-section (4) of section 67 of Cap. 240 are made applicable to appointments of subordinate officers of Municipalities.

This Case has been heard together with Case 322/62, in which judgment has been given on the 17th February, 1966.* To avoid repetitions in this judgment reference will be made herein to the judgment in Case 322/62, which for the purpose should be deemed to be part of the judgment in the present Case.

After the request made to Respondent on the 25th November, 1960, as above, for action on his part, in the case of Applicant, under sections 67 and 69 of Cap. 240, the sequence of events was as follows:—

Upon a complaint of the Mayor of Limassol to the Ministry of Interior, on the 31st January, 1961, about Respondent's delay to deal with the matter, Respondent wrote to the Mayor on the 9th March, 1961 *(exhibit 2)* informing him that Government was of the opinion that no permanent appointments should be made by the Municipalities of the five towns before the separation thereof, and before the needs in personnel of the Municipalities could be ascertained after their separation and after the laying down of their powers by the new Municipalities legislation, which was being considered.

Then ensued between the 20th May, 1961 and 30th October,

*Published *ante*, at p. 153.

1962 a correspondence, which is *exhibits 4-15* in Case 322/62 and in this Case, and which refers to the Applicant in this Case too; as such correspondence is referred to in full in the judgment in Case 322/62 it need not be referred to in extenso herein, except to state that by *exhibit 5*, on the 13th June, 1961, the Respondent had repeated more or less the contents of his letter of the 9th March, 1961 *(exhibit 2)*, which have already been set out earlier in this judgment.

On the 12th November, 1962, Respondent wrote *(exhibit 3)* to the Mayor stating that the matter in question was "being studied by the Government".

On the 28th November, 1962, counsel for Applicant wrote *(exhibit 4)* to the Respondent, asking that he should be told, the soonest possible, the final decision of the Respondent in this matter and pointing out that vital interests of his client were being prejudiced. No reply was received to this letter, and this recourse was filed on the 31st December, 1962.

When this Case came up for hearing on the 27th May, 1965, counsel for Respondent raised a preliminary objection to the effect that the subject-matter of the recourse had disappeared in the meantime due to the expiration of Cap. 240, prior to the enactment of Law 64/64. This contention was rejected by a ruling of the 19th June, 1965;* its contents need not be repeated in this judgment. The hearing continued on the 22nd and 29th October, 1965. At the hearing of the 22nd October, 1965, the Court had to rule on certain amendments of the Statement of Case, which was prepared after Presentation in this Case; this ruling does not have to be repeated herein either.

On the 22nd January, 1966, it was directed that the hearing be reopened, because, in considering its reserved judgment, the Court found it necessary to inquire further into the question of exactly what developments had taken place in the matter between the time the recourse was filed and the time it came up for determination before the Court; this course was adopted in view of the alternative contention of Applicant that Respondent is, *inter alia*, guilty of an omission to approve the appointment and salary of Applicant, and it appeared from the record of proceedings of the 20th March, 1965 (when this Case came up for Mention) that there might

*Ruling published in (1965) 3 C.L.R., 356.

have been developments relevant to the *sub judice* issue of omission.

Thus, the hearing was reopened on the 1st February, 1966; it transpired that the said developments consisted, in fact, of a letter of counsel for Applicant, dated the 5th March, 1965 *(exhibit 24)*, calling upon the Respondent to approve, under his powers, the salary of Applicant, and of the reply of the Respondent to such letter, dated the 19th March, 1965, *(exhibit 25)* by which Respondent, *inter alia*, still refused to exercise his relevant powers in the matter, this time putting forward the reason that due to the cessation of the existence of the Municipal authority which had decided on the appointment of Applicant, the relevant decision to appoint him had also ceased to exist (*vide* paragraph 2 of *exhibit 25)*; Respondent proceeded to add in his said letter that he would be prepared to examine Applicant's "appointment" if a request for the purpose would be made to him for the purpose by the "present Municipal Authority".

Respondent does not appear to have communicated even a copy of this letter *(exhibit 25)* to the Limassol Municipality, by way of a step taken by him in the matter under his relevant powers; it was merely a reply given to counsel for Applicant. Such letter *(exhibit 25)* is already the subject-matter of another recourse, by Applicant against Respondent, No. 106/65, in which proceedings have been stayed pending the outcome of the present proceedings.

This Case is in all material respects quite similar to Case 322/62. I have reached, likewise, the conclusion in this Case, that Respondent is guilty of a continuing omission to deal, under the relevant provisions, with the question of the salary of Applicant, and, for those of the reasons, given in the judgment in Case 322/62,* which are applicable *mutatis mutandis* to this Case, the Applicant in this Case, also, is entitled to succeed; it might be pointed out, also, that though the time-limit laid down by sub-section (6) of section 67 of Cap. 240, which was relied upon in the judgment in Case 322/62, is not applicable to the present Case, nevertheless the delay of Respondent to deal with the salary of Applicant is so long and unjustified that it constitutes a clear case of wrongful omission on his part to exercise his relevant powers.

*Published *ante*, at p.153.

Furthermore, in the present Case there is an additional reason why judgment should be given in favour of Applicant viz. that Respondent appears, from the relevant correspondence, to have acted under the basic misconception of law that not only the salary of Applicant, but also his appointment, were subject to Respondent's approval; on the face of the relevant provisions this is clearly not so, as Applicant's post is not one of those earmarked by section 67(1).

It is, thus, hereby declared that the omission of Respondent to deal with the question of the salary of Applicant, under the relevant provisions, ought not to have been made and whatever has been omitted by Respondent in this respect should have been performed.

It is now up to Respondent to perform whatever he has omitted to do viz. to decide whether to approve or not the salary of Applicant. He is to bear in mind, for his guidance in this respect, that compliance with a decision of an administrative Court enables, in a proper case, the avoidance of the rule against retrospectivity of administrative acts or decisions (*vide* Conclusions from the Jurisprudence of the Greek Council of State 1929-1959 p. 197).

There has been, in this Case, a collateral claim of Applicant under Article 29 of the Constitution, for failure of Respondent to reply to the letter of counsel for Applicant, *exhibit 4*; I would say very little on this point: I have come to the conclusion that Applicant is not entitled, in the light of the circumstances of this Case, to separate relief, as he has proceeded against the omission itself of Respondent to deal with the subject-matter of *exhibit 4 (vide Kyriakides and The Republic*, 1 R.S.C.C. p. 66 at p. 77).

On the question of costs I do think that, in the circumstances, the only proper order is to award the costs of this recourse against Respondent and in favour of Applicant.

Declaration that omission complained of ought not to have been made; and whatever has been omitted by respondent in this respect, should have been performed. Order as to costs as aforesaid.