

1966
April 15, 18

[TRIANTAFYLLOIDES, J.]

IORDANIS
G. IORDANOU
(No. 1)
and
THE REPUBLIC OF
CYPRUS
THROUGH THE
PUBLIC SERVICE
COMMISSION

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

IORDANIS G. IORDANOU (No. 1),

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE
PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 82/66).

Public Service—Public Officers—Public Service Commission—Transfer of public officers—Application for a provisional order suspending the effect of applicant's transfer—Application dismissed as being premature—Because the decision relating to such transfer has not yet been properly communicated to applicant, so as to take effect and become a decision which applicant is bound to obey—In the absence of legislation on the matter, such communication ought to have emanated from the Public Service Commission viz. the competent organ in the matter of such transfer. See, also, under Administrative Law, herebelow.

Administrative Law—Administrative decisions—Communication—Principles of Administrative Law governing the matter of communication of an administrative decision—Communications must be made to the person affected thereby, either directly or through his department—And must be made by the organ competent to take the decision concerned—Proper communication of an administrative decision is an essential step for its taking effect. See, also, under Public Service, above.

Public Service Commission—See, also, under Public Service, Administrative Law, above.

The Public Service Commission is an independent public organ and not a mere Committee forming part of the Governmental administrative machinery.

Constitutional Law—Public Service Commission—Articles 124 and 125 of the Constitution—See under Public Service Commission, above.

By this recourse, filed on the 14th April, 1966, the applicant, who is a public officer in the public service of the Republic, department of Agriculture, challenges the validity of his transfer from Nicosia to Omodhos. By an application, filed also on the 14th April, applicant sought a provisional order suspending the effect of the said transfer until the final determination of this recourse. On the 6th April, 1966, the Director of the department of Agriculture wrote to the applicant that he was being transferred to Omodhos as from the 18th April, 1966 (Exhibit 1). There is nothing in that exhibit—and there was nothing else in the material before the Court—to show that the applicant was informed by the Director that his transfer had been decided upon by the competent organ viz. the Public Service Commission.

In dismissing the application for a provisional order as premature, the learned Justice:-

Held, (1)(a) proper communication of an administrative decision is an essential step for its taking effect; such communication must be made to the person affected thereby and must be made by the organ competent to take the decision concerned—unless there exists provision by law otherwise.

(b) Of course, communication does not go to the validity of the decision in question, but it is only necessary for the taking effect thereof; this is, also, why the time, within which a recourse may be made against a decision, runs from its proper communication.

(2) But in the present case, I find that the decision regarding the transfer of the applicant, taken by the competent organ viz. the Public Service Commission on the 5th April, 1966, has not yet been properly communicated to applicant so as to take effect and become a decision which applicant is bound to obey. On the face of it, Exhibit 1 (*supra*) appears to be a transfer emanating only from the Director of the Department of Agriculture. It certainly does not appear to be a communication of the Public Service Commission viz. the competent organ in the matter.

(3) And in the absence of any legislation governing the matter of the communication of a decision such as the

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one relating to the transfer of applicant, this Court can only hold, in accordance with the above principles of Administrative Law, that communication of the said decision to applicant ought to have emanated from the Public Service Commission, the more so as the Commission is an independent public organ and not a mere Committee forming part of the Governmental administrative machinery and deciding, by way of internal arrangement, matters of transfers.

(4)(a) It follows that, in the circumstances, it would be premature for the Court to decide whether or not to suspend the effect of such transfer, once such effect has not yet commenced.

(b) It is now up to the Public Service Commission to take, if it so wishes, appropriate steps to communicate itself properly this transfer to applicant, so that it may take effect; this may be done either directly or through his department.

Application.

Application for a provisional order postponing the taking effect of applicant's transfer from Nicosia to Omodhos, until the final determination of a recourse against the decision of the respondent concerning the said transfer.

L. Clerides with A. Triantafyllides for Applicant.

M. Spanos, Counsel of the Republic, for the Respondent.

The following Decision was delivered by:—

TRIANTAFYLLIDES, J.: By this recourse, which was filed on the 14th April, 1966, Applicant challenges the validity of his transfer from Nicosia to Omodhos, with effect from today, the 18th April, 1966.

By an application, filed also on the 14th April, Applicant seeks a Provisional Order postponing the taking effect of the said transfer until the final determination of this recourse.

I have reached the conclusion that this application for a Provisional Order has to be dismissed as being premature, in

the sense that the prerequisites have not yet been satisfied for the decision of Applicant's transfer to take effect and for Applicant to be bound to obey such decision.

My reasons for reaching this conclusion are as follows:—

Applicant's transfer was proposed to the Public Service Commission, on the 10th March, 1966, by the Director of the Department of Agriculture (see *exhibit 6*); the Commission, on the 5th April, 1966, decided, after considering the recommendations of the Department concerned, to transfer Applicant from Nicosia to Omodhos with effect from the 18th April, 1966, (see *exhibit 7*); on the same day, the Commission informed the Director of the Department of Agriculture that Applicant's transfer had been approved, (see *exhibit 6*).

On the 6th April, 1966, the Director of the Department of Agriculture wrote to Applicant that he was being transferred to Omodhos as from the 18th April, 1966, (*exhibit 1*).

There is nothing in *exhibit 1*—and there is nothing else in the material before the Court—to show that the Applicant was informed by the Director that his transfer had been decided upon by the Public Service Commission.

It is common ground that the Applicant was not notified by the Public Service Commission either directly or indirectly, through his Head of Department, about his said transfer.

Thus, neither has the Public Service Commission communicated to Applicant its decision to transfer him, nor did Applicant come to know officially that the Commission had decided upon his transfer.

On the face of it, *exhibit 1* appears to be a transfer emanating only from the Director of the Department of Agriculture. It certainly does not appear to be a communication of the Commission.

Proper communication of an administrative decision is an essential step for its taking effect; such communication must be made to the person affected thereby and must be made by the organ competent to take the decision concerned—unless there exists provision by law otherwise. Of course, communication does not go to the validity of the decision in question, but it is only necessary for the taking effect thereof; this is, also, why the time, within which a recourse may be

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made against a decision, runs from its proper communication. (Vide Conclusions from the Jurisprudence of the Greek Council of State, 1929-1959, p. 193 and Kyriakopoulos on Greek Administrative Law, 4th edition, volume II, p. 397).

In the absence of any legislation in Cyprus governing the matter of the communication of a decision such as the one relating to the transfer of Applicant, this Court can only hold, in accordance with the above principles of Administrative Law, that communication of the said decision to Applicant ought to have emanated from the Public Service Commission, the more so as the Commission is an independent public organ and not a mere Committee forming part of the Governmental administrative machinery and deciding, by way of internal arrangement, matters of transfers.

Irrespective, therefore of the validity or not, otherwise, of the transfer in question, I find that it has not yet been properly communicated to Applicant so as to take effect and to become a decision which Applicant is bound to obey.

It follows that, in the circumstances, it would be premature for the Court to decide whether or not to suspend the effect of such transfer, once such effect has not yet commenced.

It is now up to the Public Service Commission, to take, if it so wishes, appropriate steps to communicate itself properly this transfer to Applicant, so that it may take effect; this may be done either directly or through his Department.

I might add for the guidance of the Commission that it should, as in all similar cases of transfer, fix such date for its becoming effective as would appear to it to be reasonable in the circumstances of this particular case.

Regarding the costs of this application, it is hereby ordered that they should be costs in cause, in any case not against Applicant.

Order in terms.

Order for costs as aforesaid.