

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COSTAS KOZAKIS

COSTAS KOZAKIS,

Applicant,

and

v.
REPUBLIC
(COUNCIL OF
MINISTERS
AND OTHERS)

- THE REPUBLIC OF CYPRUS, THROUGH
1. THE COUNCIL OF MINISTERS,
 2. THE COUNCIL FOR REINSTATEMENT OF
DISMISSED PUBLIC OFFICERS,
 3. THE MINISTRY OF FINANCE,

Respondents.

(Case No. 64/66).

Public Officers—Dismissed public officers—Reinstatement—The Dismissed Public Officers Reinstatement Law 1961 (Law 48 of 1961)—Decision of Respondents not to treat Applicant as an “Entitled Officer” for purposes of reinstatement under the Law—Nothing to show sufficiently that termination of Applicant’s service was motivated by “political reasons”—Sub-judice decision properly open to Respondent in view of material before it.

Administrative Law—Misconception of fact—It is up to the Applicant to satisfy the Court that the Respondent has acted under a misconception of fact, or at least to raise a doubt in the mind of the Court in this respect.

Dismissed Public Officers—Reinstatement—Law No. 48 of 1961 (supra)—See above.

Reinstatement—Reinstatement of public Officers dismissed for political reasons—See above.

The complaint of the Applicant in the instant recourse was against the decision of Respondent 2 (hereinafter to be referred to as the Respondent Council) not to treat him as an “entitled officer” for purposes of reinstatement under the Dismissed Public Officers Reinstatement Law 1961 (48/61).

From the Governmental personal file of the Applicant it

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appeared that his services as an Inspector of the Eastern Messaoria Irrigation Works were terminated as from the 1st May, 1958, and he was pensioned off on abolition of office terms for reasons of economy.

Applicant's claim for reinstatement under the aforesaid Law was rejected, the Respondent Council having reached the conclusion, on the basis of the said personal file of the Applicant, that his services were not terminated for "political reasons" as defined in Law 48/61, and, therefore, he was not eligible for reinstatement under such Law.

Applicant contended that the termination of his services was, *in fact*, due to political reasons, in view of his being an active member of EOKA—the Organization which was waging the 1955–1959 Liberation Struggle—and that, therefore the *sub judice* decision is based on a misconception of fact. Counsel for Respondents has not disputed the fact that the Applicant has rendered services to EOKA but he has submitted that, on the material before the Respondent Council the *conclusion reached by it was a proper one*.

Held, (1). It was up to the Applicant to satisfy the Court that the Respondent Council has acted under a misconception of fact, or at least to raise a doubt in the mind of the Court in this respect (see Stasinopoulos on the Law of Administrative Acts (1951) p. 304).

(2) I have been neither satisfied that the Council has acted on the basis of a misconception of fact, nor have I been put in any doubt regarding the cause for the termination of the services of the Applicant; because, though there can be no dispute at all that the Applicant has rendered valuable services as a member of EOKA, there is nothing at all to show sufficiently that it is, at least, probable that the termination of his services was motivated by "political reasons" because of his said activities.

(3) On the contrary, as it appears from his personal file the termination of his services was the result of a general study regarding economies in the relevant Irrigation Works, and unsuccessful efforts were made to find for the Applicant similar employment in another Government Department before deciding to retire him on abolition of office terms.

(4) In the circumstances I am forced to the conclusion that the *sub-judice* decision was properly open to the Respondent Council in view of the material before it.

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Application dismissed.

Recourse.

Recourse against the decision of Respondent 2 not to treat Applicant as an "entitled officer" for purposes of reinstatement under the Dismissed Public Officers Reinstatement Law 1961 (Law 48/61).

A. Emilianides with E. Emilianides, for the Applicant.

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

Cur. adv. vult.

The following Judgment was delivered by:

TRIANAFYLLIDES, J.: In this recourse the Applicant complains, in effect, against the decision of the Respondent Council for Reinstatement of Dismissed Public Officers (Respondent 2 — hereinafter to be referred to as the "Respondent Council") not to treat him as an "entitled officer" for purposes of reinstatement under the Dismissed Public Officers Reinstatement Law 1961 (Law 48/61).

The said decision was communicated to the Applicant by letter dated the 7th February, 1966 (see *exhibit 1*).

As it appears from the Governmental personal file of the Applicant (see *exhibit 3*) the services of the Applicant as an Inspector of the Eastern Messaoria Irrigation Works were terminated as from the 1st May, 1958, and he was pensioned off on abolition of office terms for reasons of economy (see *reds 110 and 117 in exhibit 3*).

The Applicant claimed reinstatement under Law 48/61, but, on the basis of the contents of the aforesaid personal file of the Applicant, the Respondent Council reached the conclusion that the Applicant's services were not terminated for "political reasons", as defined in Law 48/61, and, therefore, that he was not eligible for reinstatement under such Law.

The relevant decision of the Respondent Council is dated

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the 25th January, 1961, and is to be found in the Council's case-file for the Applicant's application (see *exhibit 2*); it is also reproduced, in its essentials, in the aforesaid letter of the 7th February, 1966 (*exhibit 1*).

It has been the contention of the Applicant that the termination of his services was, *in fact*, due to political reasons, in view of his being an active member of EOKA — the Organization which was waging the 1955–1959 Liberation Struggle — and that, therefore, the *sub judice* decision is based on a misconception of fact.

In support of this contention evidence was adduced by the Applicant about his EOKA activities, establishing them to my complete satisfaction.

Counsel for Respondents has not tried to dispute the fact that the Applicant has, indeed, rendered services to EOKA, but he has submitted that, on the material before the Respondent Council, the conclusion reached by it was a proper one.

It was up to the Applicant to satisfy the Court that the Respondent Council has acted under a misconception of fact, or at least to raise a doubt in the mind of the Court in this respect (see Stasinopoulos on the Law of Administrative Acts (1951) p. 304).

I regret to say that I have been neither satisfied that the Council has acted on the basis of a misconception of fact, nor have I been put in any doubt regarding the cause for the termination of the services of the Applicant; because, though there can be no dispute at all that the Applicant has rendered valuable services as a member of EOKA, there is nothing at all to show sufficiently that it is, at least, probable that the termination of his services was motivated by "political reasons" because of his said activities. On the contrary, as it appears from his personal file (*exhibit 3*) the termination of his services was the result of a general study regarding economies in the relevant Irrigation Works, and unsuccessful efforts were made to find for the Applicant similar employment in another Government Department before deciding to retire him on abolition of office terms. In the circumstances I am forced to the conclusion that the *sub judice* decision was properly open to the Respondent Council in view of the material before it.

For the above reasons—and as the other grounds which have been raised in the Application in this recourse have not been pressed at the hearing of this Case—I have reached the conclusion that this recourse cannot succeed and has to be dismissed accordingly.

In the circumstances, however, I do not think that it would be proper to make an order for costs against the Applicant; he felt strongly that behind the termination of his services there were sinister political motives, and he was entitled to bring his grievance to this Court; unfortunately for him there was no evidence to substantiate his belief, either before the Respondent Council or before this Court.

*Application dismissed.
Order for costs as
aforesaid.*

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