

1967  
May 13

[TRIANTAFYLIDIS, J.]

THEODOTOS  
PAPHITIS  
v.  
REPUBLIC  
(COUNCIL OF  
MINISTERS AND  
ANOTHER)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

THEODOTOS PAPHITIS,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH

1. THE COUNCIL OF MINISTERS,
2. THE COUNCIL FOR REINSTATEMENT  
OF DISMISSED PUBLIC OFFICERS,

*Respondents.*

(Case No. 45/66).

*Administrative Law—Cyprus Police Force—Reinstatement—Claim for reinstatement under the Dismissed Public Officers Reinstatement Law, 1961 (No. 48 of 1961)—Refusal of Applicant's claim for reinstatement in the Cyprus Police Force—Relative decision annulled as there have arisen grave doubts in the mind of the Court about the correctness of the factual basis on which Respondent No. 2 refused Applicant's claim—And for the collateral reason that such Respondent failed to conduct the reasonably necessary enquiry for the ascertainment correctly of all relevant facts.*

The Applicant in this case complains against the decision of Respondent No. 2 not to treat him as an entitled officer for the purposes of the Dismissed Public Officers Reinstatement Law 1961 (Law 48 of 1961).

Applicant's claim for reinstatement has arisen because on the 3rd April, 1956, while being posted at Limassol he was informed in writing that the then British Governor of Cyprus had directed that he should be required to retire on pension under s. 8 (1) of the Pensions Law Cap. 288 (now Cap. 311) with effect from the 1st August, 1956.

Applicant's allegation all along before the Respondent Council has been that his services were terminated for political reasons related to the EOKA liberation struggle. The Respondent Council by basing itself on the personal file of

the Applicant has taken the view that Applicant's allegation was not well-founded and that the termination of his services was not due to political reasons but to professional inefficiency

The Council did not accept as correct statements of Applicant regarding events which according to him, established the political motivation behind the termination of his services

The above events were brought to the notice of the Council in a letter addressed to them by Applicant wherein they were further informed that the correctness of his statements could be confirmed by an ex-police officer. The Respondent Council did not call before it the said ex-police officer but he was called before the Court in these proceedings and has fully borne out the relevant evidence of the Applicant who has also testified on oath in these proceedings

*Held (I) Regarding the recourse against Respondent 1*

The Council of Ministers, Respondent 1 has set up, under the provisions of Law 48/61, Respondent 2 but is in no way otherwise connected with the subject-matter of the present proceedings, this recourse therefore, fails in so far as it relates to Respondent 1

*Held (II) On the merits of the sub judice decision*

(1) The Respondent Council in not accepting the allegation of the Applicant that he had been dismissed for political reasons did not have in mind what Mr Elstathiou has testified as to the views about the Applicant of Mr Bowring the British Senior Superintendent of Police at Limassol. Mr Elstathiou was never heard by the Respondent Council in relation to the claim of the Applicant for reinstatement and, thus such Council never had the opportunity of ascertaining in full all relevant facts.

(2) In the circumstances of this Case there have arisen in my mind grave doubts—to say the least—about the correctness of the factual basis on which the Respondent Council has proceeded not to accept Applicant's claim for reinstatement. It is, therefore, proper, in my opinion, to annul the *sub judice* decision on this ground (see Stasinopoulos on the Law of Administrative Acts, 1951 ed., p 305)

(3) In these proceedings this Court could not safely assume what the Respondent Council would have done had it known

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the full facts, and then proceed to determine this recourse on the basis of such an assumption. Had the Respondent Council heard Mr. Efstathiou it *might* still have rejected the claim of the Applicant by finding, on the basis of the contents of the personal file of the Applicant, that the termination of his services was not exclusively due to “political reasons”—as defined in section 2 of Law 48/61. On the other hand, it *might* have reached the conclusion that, though Applicant was inefficient to a certain extent, what solely and really led Government to utilize his inefficiency—which had existed and was known and accepted for quite some time in the past—as a convenient ground for his retirement, 3½ years before his retirement due to age and after a service of 31 years, was the view that he was an EOKA sympathizer and unwilling to give information about EOKA; and, in this respect, it must not be lost sight of that the *sole* disciplinary conviction in the Applicant’s career as policeman—which occurred only a few months before the termination of his services—was for disobeying orders and neglect of duty, through failing to participate at a general “stand to” at the Ayios Ioannis Police Station in Limassol, in relation to political disturbances.

(4) There is a collateral reason which leads to the annulment of the *sub judice* decision and this is that, in my view, in this particular Case the Respondent Council, through not hearing at least Mr. Efstathiou, has failed to conduct the reasonably necessary enquiry for the ascertainment correctly of all the relevant facts; thus, the outcome of the exercise of its statutory discretion is fatally vitiated (see *HjiLouca* and *The Republic*, (1966) 3 C.L.R. 854.

(5) For all the above reasons the *sub judice* decision is hereby declared to be null and void and of no effect whatsoever as being contrary to law and in abuse and excess of powers. The matter will have to be reconsidered by the Respondent Council, on the basis, and after ascertainment, of all relevant facts.

*Held, (III). With regard to costs:*

Regarding costs I have decided to make no order as to costs because in a Case such as the present, it was open to the Applicant also to ask the Respondent Council to hear the evidence of a witness such as the said Mr. Efstathiou; and had he done so,

possibly these proceedings might never have arisen, if the Respondent, after hearing Mr. Efstathiou, had decided the matter in his favour.

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*Sub judice decision  
annulled. No order as  
to costs.*

Cases referred to:

*HjiLouca v. Republic*, (1966) 3 C.L.R. p. 854.

### Recourse.

Recourse against the decision of Respondent 2 by virtue of which Applicant was not treated as an entitled officer for the purposes of the Dismissed Public Officers Reinstatement Law 1961 (Law 48/61).

*A. Triantafyllides*, for the Applicant.

*K. Talarides*, Counsel of the Republic, for the Respondent.

*Cur. adv. vult.*

The following Judgment was delivered by:

TRIANTAFYLLIDES, J.: By this recourse the Applicant complains against a decision of Respondent 2 (hereinafter to be referred to as the "Respondent Council") by virtue of which he was not treated as an "entitled officer" for the purposes of the Dismissed Public Officers Reinstatement Law 1961 (Law 48/61). Such decision was communicated to the Applicant by letter dated the 28th January, 1966 (see *exhibit 1*).

The Council of Ministers, Respondent 1, has set up, under the provisions of Law 48/61, Respondent 2, but is in no way otherwise connected with the subject-matter of the present proceedings; this recourse, therefore, fails in so far as it relates to Respondent 1.

The *sub judice* decision is dated the 27th January, 1966, and is to be found in the file of the Respondent Council relating to the application of the Applicant for reinstatement (see exhibit 3). The said decision is the second one taken by the Respondent Council in the matter; an earlier one was challenged by recourse 242/62 and, as a result, the matter was reconsidered and a new decision, the *sub judice* one, was reached.

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The claim of the Applicant for reinstatement has arisen because on the 3rd April, 1956, while the Applicant was posted at Limassol as a sub-Inspector of Police, he was informed in writing that the then British Governor of Cyprus had directed that he should be required to retire on pension under section 8(1) of the Pensions Law, Cap. 288 (now Cap. 311) with effect from the 1st August, 1956 (see blue 118 in the official personal file of the Applicant, *exhibit 2*).

At the time the Applicant was fifty-one years old and he had been serving in the Police for thirty-one years.

It has been alleged, all along, by the Applicant – in applying to the Respondent Council for reinstatement and in the proceedings before this Court – that his services were terminated for political reasons related to the, at the time, EOKA Liberation Struggle. On the other hand, the Respondent Council, as it appears from its relevant file (*exhibit 3*), as well as from the letter of such Council to the Applicant dated the 28th January, 1966 (*exhibit 1*), has taken the view that Applicant's allegation was not well-founded and that the termination of his services was not due to political reasons but to professional inefficiency. In taking such a view the Respondent Council has based itself on the contents of the personal file of the Applicant (*exhibit 2*).

It is clear, both from the *sub judice* decision of the Respondent Council, as well as from its aforesaid letter of the 28th January, 1966, that it did not accept as correct statements of the Applicant regarding events which, according to him, established the political motivation behind the termination of his services.

One of such events was that shortly before the termination of Applicant's services the British Superintendent in charge of the Limassol Police, Mr. Bowring, got very angry, because the Applicant did not provide information about EOKA, and declared that the Applicant was not fit to wear a policeman's uniform.

The above had been brought to the notice of the Respondent Council, by the Applicant, in a letter dated 28th April, 1965, which he addressed to the Respondent Council by way of particulars in support of his application for reinstatement. At the same time the Applicant brought to the notice of the Respondent Council the fact that an ex-police officer, Mr.

Costas Efstathiou, could confirm the correctness of his statements.

The Respondent Council did not call before it as a witness the said Mr. Efstathiou. He has, however, been called as a witness by the Applicant, before this Court, during the present proceedings; he has fully borne out the relevant evidence of the Applicant, who has also testified on oath in these proceedings. Mr. Efstathiou has told the Court, *inter alia*, that Mr. Bowring, who was the Senior Superintendent of Police, in charge of Limassol Police, said to him early in March, 1956, that the Applicant was a sympathizer of EOKA, quite useless, he would not give any information and that it was time he was sacked.

It is quite significant that on the 4th March, 1956, the said Senior Superintendent of Police at Limassol made a most unfavourable report against the Applicant (see blue 111 in *exhibit 2*) and by the 15th March, 1956, the Commissioner of Police was recommending the termination of the services of the Applicant (see blues 115-116 in *exhibit 2*).

On the other hand, the personal file of the Applicant (*exhibit 2*) does contain material indicating professional inefficiency of the Applicant, which existed before the date of the commencement of the EOKA Liberation Struggle in April 1955.

Had the Respondent Council possessed knowledge of the full facts—including what has been stated to the Court by Mr. Efstathiou—and had it, reasonably in the light of all the material before it, reached the conclusion that the Applicant's services were not terminated exclusively for political reasons—as provided for in Law 48/61—then this Court would not interfere with such a conclusion.

But the Respondent Council in not accepting the allegation of the Applicant that he had been dismissed for political reasons did not have in mind what Mr. Efstathiou has testified as to the views about the Applicant of Mr. Bowring, the British Senior Superintendent of Police at Limassol; Mr. Efstathiou was never heard by the Respondent Council in relation to the claim of the Applicant for reinstatement and, thus, such Council never had the opportunity of ascertaining in full all relevant facts.

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In the circumstances of this Case there have arisen in my mind grave doubts — to say the least — about the correctness of the factual basis on which the Respondent Council has proceeded not to accept Applicant's claim for reinstatement. It is, therefore, proper, in my opinion, to annul the *sub judice* decision on this ground (see Stasinopoulos on the Law of Administrative Acts, 1951 ed., p. 305).

In these proceedings this Court could not safely assume what the Respondent Council would have done had it known the full facts, and then proceed to determine this recourse on the basis of such an assumption. Had the Respondent Council heard Mr. Efstathiou *it might* still have rejected the claim of the Applicant by finding, on the basis of the contents of the personal file of the Applicant, that the termination of his services was not exclusively due to "political reasons" — as defined in section 2 of Law 48/61. On the other hand, *it might* have reached the conclusion that, though Applicant was inefficient to a certain extent, what solely and really led Government to utilize his inefficiency — (which had existed and was known and accepted for quite some time in the past) — as a convenient ground for his retirement, 3½ years before his retirement due to age and after a service of 31 years, was the view that he was an EOKA sympathizer and unwilling to give information about EOKA; and, in this respect, it must not be lost sight of that the *sole* disciplinary conviction in the Applicant's career as policeman — which occurred only a few months before the termination of his services — was for disobeying orders and neglect of duty, through failing to participate at a general "stand to" at the Ayios Ioannis Police Station in Limassol, in relation to political disturbances.

There is a collateral reason which leads to the annulment of the *sub judice* decision and this is that, in my view, in this particular Case the Respondent Council, through not hearing at least Mr. Efstathiou, has failed to conduct the reasonably necessary enquiry for the ascertainment correctly of all the relevant facts; thus, the outcome of the exercise of its statutory discretion is fatally vitiated (see *HjiLouca and The Republic*, (1966) 3 C.L.R. 854).

For all the above reasons the *sub judice* decision is hereby declared to be null and void and of no effect whatsoever as being contrary to law and in abuse and excess of powers. The

matter will have to be reconsidered by the Respondent Council, on the basis, and after ascertainment, of all relevant facts.

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Regarding costs I have decided to make no order as to costs because in a Case such as the present, it was open to the Applicant also to ask the Respondent Council to hear the evidence of a witness such as the said Mr. Efstathiou; and had he done so, possibly these proceedings might never have arisen, if the Respondent, after hearing Mr. Efstathiou, had decided the matter in his favour.

*Sub judice decision  
annulled. No order as  
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