[TRIANTAFYLLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DIONYSIOS NICOLAOU,

Applicant,

and

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

Respondents.

(*Case No.* 53/66).

Administrative Law—Cyprus Police Force—Reinstatement—Claim for Reinstatement under the Dismissed Public Officers Reinstatement Law, 1961 (*No.* 48 *of* 1961)*—Appropriate Authority's refusal to treat Applicant as an "entitled officer" for the purposes of the Law—Applicants retirement approached under a basic misconception—Relative decision annulled as being contrary to law and in abuse and excess of powers.*

Administrative Law—Cyprus Police Force—Reinstatement—Policeman's claim for reinstatement—Respondent's council's decision thereon annulled as having erroneously taken into account a totally extraneous factor—Namely the rejection of Applicant's claim by another organ.

Reinstatement—See under Administrative Law above.

This case concerns a recourse against the refusal of the Respondents to treat Applicant as an 'entitled officer' under the Dismissed Public Officers Reinstatement Law 1961 (Law 48 of 1961).

The facts which led to the present litigation are as follows:

Applicant, a police sergeant, was on the 13th April, 1956, notified by the Commissioner of Police that the Governor of Cyprus had directed that he (the Applicant) was to be required to retire from the Police Force under section 8(1) of the Pensions

Law, Cap. 288 (now Cap. 311) with effect from the 1st August, 1966. In the meantime, on the 10th April, 1956, Applicant requested himself to be allowed to resign but his Application reached the Commissioner of Police on the 16th April, 1956.

From the contents of the *sub judice* decision it is clear that the Respondent council rejected Applicant's allegation that the termination of his services was due to political reasons.

The view taken by the Respondent Council was that the Applicant had been allowed to retire on his own Application and that, therefore, the allegations of Applicant that his retirement was due to anything else but his own wish were unfounded, and that the Respondent council was of the opinion that the Applicant had not been compelled to retire for political reasons but that he had retired on his own initiative.

Held, (*I*). *With regard to 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; therefore, this recourse fails in so far as it relates to Respondent 1.

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

(1) Such a view is totally misconceived because, as it has already been stated, it is abundantly clear from the official personal file of the Applicant (*exhibit* 6) that his Application for leave to resign did not contribute in the least to his retirement, which was a compulsory one. It follows, therefore, that the Respondent Council has approached the matter of the Applicant's retirement labouring under a basic misconception.

(2) This Court is left, therefore, with no alternative but to annul the *sub judice* decision so as to enable the Respondent Council to approach the question of the Applicant's retirement in its true light, as a clearly compulsory one, and to decide then, on this basis and after due examination of the allegations of the Applicant, whether such retirement was due to Applicants inefficiency or whether it was solely caused by his EOKA sympathies and cognate activities, his already existing—for quite some time—inefficiency and slight deafness having been found a convenient ground for getting rid of the Applicant, a few years before his normal retirement and after thirty years' service.

(3) There is, further, a second ground on which I am of the view that the Respondent Council's decision has to be annulled and this is that the Council has erroneously taken into account a totally extraneous factor: It is expressly mentioned in the *sub judice* decision, as part of the reasons for rejecting the Applicant's claim for reinstatement, that the Minister of Interior in 1960 rejected an Application of the Applicant for compensation, in relation to the termination of his services, on the ground that such termination was not due to political reasons. This was at a time prior to the setting up of the Respondent Council under Law 48/61. In my view the Respondent Council was neither bound, nor could have been influenced at all, by a decision on the matter reached by another organ; and in relying on such a decision it has exercised its discretion in a defective manner leading to its annulment.

(4) For all the above reasons I have come to the conclusion that the *sub judice* decision should be 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 has now to be reconsidered by the Respondent Council.

Held, (III). With regard to costs:

Regarding costs, I have decided to award part of the costs in favour of the Applicant which I assess at £8. I am not awarding him all his costs because the Applicant has not won his case on the substance, but on the basis only of an erroneous—*bona fide*—approach by the Respondent Council to his Application.

Sub judice decision annulled. Order for costs as aforesaid.

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. Neocleous, for the Applicant.

K. Talarides, Counsel of the Republic, for the Respondents.

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).

The said decision of the Respondent Council was communicated to the Applicant by letter dated the 7th February, 1966 (see *exhibit* 4).

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; therefore, this recourse fails in so far as it relates to Respondent 1.

The *sub judice* decision was taken on the 25th January, 1966, and is to be found set out in the file of the Respondent Council relating to the application of the Applicant for reinstatement (see *exhibit* 7).

The claim of the Applicant for reinstatement under Law 48/61 has arisen as follows:

On the 13th April, 1956, while the Applicant was serving in the Police as a Sergeant, stationed at Limassol, he was notified by the Commissioner of Police that the then British Governor of Cyprus had directed that the Applicant was to be required to retire from the Police under section 8 (1) of the Pensions Law, Cap. 288 (now Cap. 311), with effect from the 1st August, 1956 (see *exhibit* 1).

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

The said direction of the Governor had been made on the strength of a recommendation of the Commissioner of Police dated the 3rd April, 1956, which is to be found in the official personal file of the Applicant (see blugs 65-66 in *exhibit* 6). It was stated in such recommendation that the Applicant was lazy, stupid, slovenly, without initiative whatsoever; also, that he was slightly deaf. It was observed that he was "dead wood" in the Police, that his usefulness had been exhausted and that there was no possibility of his making any improvement.

In the meantime, on the 10th April, 1956, the Applicant requested, himself, to be allowed to resign from the Police. His application reached the Commissioner of Police on the 16th April, 1956, and it was endorsed "Seen. He has already been required to retire". (See blue 70 in exhibit 6).

It is, thus, clear that the request of the Applicant to be allowed to resign *did not in any way, contribute* to his retirement, which was a compulsory one.

In relation to the said request of the Applicant I do accept the explanation given by him in evidence in these proceedings, namely, that he made such request when he came to know unofficially that his compulsory retirement was in the making.

The Applicant applied for reinstatement, under Law 48/61, on the 6th December, 1961, alleging that the termination of his services was due to political reasons. His application was turned down by the Respondent Council and he was informed of this by letter dated the 17th September, 1962. He then filed recourse 219/62, which was later withdrawn upon the Respondent Council undertaking to re-examine his case. The subject-matter of this recourse is the outcome of such re-examination.

From a perusal of the contents of the *sub judice* decision in the Respondent Council's file (*exhibit* 7) it is clear that it rejected the allegation of the Applicant that the termination of his services was due to political reasons.

From the reasoning of the Respondent Council in the said decision it appears that it acted under the impression – an erroneous one – that the retirement of the Applicant was due to a certain extent to his own request to be allowed to resign, in addition to being due to an intention to retire him compulsorily. Actually, it seems as if more weight was given to the voluntary aspect of the matter, because the decision of the Respondent Council ends up with the conclusion that the Applicant was not compelled to retire but had retired voluntarily.

What has been the view in fact taken by the Respondent Council in this matter has, indeed, been put beyond doubt by the letter of the 7th February, 1966 (*exhibit* 4) which was addressed by the Chairman of the Respondent Council to the Applicant informing him of the decision of the Council; it is

stated therein that from the material before the Council it appeared that the Applicant had been allowed to retire on his own application and that, therefore, the allegations of Applicant that his retirement was due to anything else but his own wish were unfounded, and that the Respondent Council was of the opinion that the Applicant had not been compelled to retire for political reasons but that he had retired on his own initiative.

Such a view is totally misconceived because, as it has already been stated, it is abundantly clear from the official personal file of the Applicant (*exhibit* 6) that his application for leave to resign did not contribute in the least to his retirement, which was a compulsory one. It follows, therefore, that the Respondent Council has approached the matter of the Applicant's retirement labouring under a basic misconception.

This Court is left, therefore, with no alternative but to annul the *sub judice* decision so as to enable the Respondent Council to approach the question of the Applicant's retirement in its true light, as a clearly compulsory one, and to decide then, on this basis and after due examination of the allegations of the Applicant, whether such retirement was due to Applicant's inefficiency or whether it was solely caused by his EOKA sympathies and cognate activities, his already existing – for quite some time – inefficiency and slight deafness having been found a convenient ground for getting rid of the Applicant, a few years before his normal retirement and after thirty years' service.

There is, further, a second ground on which I am of the view that the Respondent Council's decision has to be annulled and this is that the Council has erroneously taken into account a totally extraneous factor: It is expressly mentioned in the *sub judice* decision, as part of the reasons for rejecting the Applicant's claim for reinstatement, that the Minister of Interior in 1960 rejected an application of the Applicant for compensation, in relation to the termination of his services, on the ground that such termination was not due to political reasons. This was at a time prior to the setting up of the Respondent Council under Law 48/61. In my view the Respondent Council was neither bound, nor could have been influenced at all, by a decision on the matter reached by another organ; and in relying on such a decision it has exercised its discretion in a defective manner leading to its annulment.

For all the above reasons I have come to the conclusion that the *sub judice* decision should be declared to be null and void and of no effect whatsoever as being contraty to law and in abuse and excess of powers. The matter has now to be reconsidered by the Respondent Council.

Regarding costs, I have decided to award part of the costs in favour of the Applicant which I assess at £8. I am not awarding him all his costs because the Applicant has not won his case on the substance, but on the basis only of an erroneous—*bona fide*—approach by the Respondent Council to his application.

Sub judice decision annulled. Order for costs as aforesaid.