1968
Mar. 30

STEPHANOS IOANNOU AND OTHERS
v.
REPUBLIC (MINISTRY OF COMMUNICATIONS AND WORKS).

[TRIANTAFYLLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

STEPHANOS IOANNOU AND OTHERS,
Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTRY OF COMMUNICATIONS AND WORKS,
Respondent.

(Cases Nos. 87/65, 171/65).

Workmen—Regular Workmen in the employment of the Public Works Department—Termination of Applicants' employment on the ground of redundancy — Validity — Government, through the Council of Ministers (its policy making organ under Article 54 of the Constitution) entitled to decide whether, and what, construction works should be given to outside contractors—And, consequently, to terminate, on the ground of redundancy the employment of a number of regular workmen of the Public Works Department such as the Applicants—Decision of the Council of Ministers adopting such redundancy scheme—Not vitiated by any material misconception—Applicant's recourse in case 87/65 fails on that ground—And as regards a number of them recourse fails on the ground that by accepting without protest "termination of employment benefits" under the redundancy scheme they have been deprived of the legitimate interest in the sense of Article 146.2 of the Constitution—Applicant's recourse in case 171/65, however, succeeds—Because termination of his employment was effected under a material misconception of fact—Question of compensation to this successful Applicant not a matter for this Court—But a matter for a civil Court under the provisions of Article 146.6 of the Constitution.

Administrative and Constitutional Law—Legitimate interest in the sense of Article 146.2 of the Constitution—Compensation to be awarded to a successful Applicant—Matter for a civil Court under Article 146.6 of the Constitution, and not for this Court—See, also, above under Workmen.

Legitimate interest—Under Article 146.2 of the Constitution—See above under Workmen.

Constitutional Law—Council of Ministers—Policy making organ of Government—Article 54 of the Constitution—Termination of employment of workmen of the Public Works Department on the ground of redundancy—Not conflicting with Articles 21 and 26 of the Constitution—See, also above under Workmen.

Council of Ministers—Policy making organ of the Government—Article 54 of the Constitution—See above.

Administrative Law—Decision—Validity—Decision vitiated by a material misconception of fact—See above under Workmen.

Recourse under Article 146 of the Constitution—Legitimate interest required—Paragraph 2—Compensation for loss caused by a decision annulled on a recourse under Article 146—Not a matter for the Supreme Court—But a matter for a civil Court under the provisions of Article 146.6—See, also, above under Workmen.

Compensation—Article 146.6 of the Constitution—See above.

Liability of the Republic—Article 146.6. of the Constitution—See above.

Supreme Court—Competence—It has no competence in respect of compensation to be awarded to a successful Applicant—Article 146.6 of the Constitution—See above.

In these two cases, which have been heard together because they involve common issues, the several Applicants in case 87/65 and the Applicant in case 171/65 complain against the termination by the Respondent Ministry, of their employment as regular workmen of the Public Works Department. Such termination was in the form of standing off notices to the Applicants on the ground of redundancy.

By a decision of this Court given on the 6th May, 1967, the preliminary issue regarding the competence of the Respondent Ministry, to act as it did was determined in favour of the Respondent; it was held that it was the Respondent, and not the Public Service Commission (see Article 125 of the Constitution), which was the competent organ for the purpose (see (1967) 3 C.L.R. p. 279).

With regard to Applicant in case 171/65 it has transpired during the proceedings that his name was not included in the lists of those whose services were to be terminated

on the ground of redundancy; he was stood off, therefore, by mistake; he was recalled back and re-employed. He therefore succeeds in his recourse on the ground of misconception of fact.

With regard to the other case 87/65, five Applicants therein have withdrawn their recourses. On the other hand Applicants Nos. 4, 8, 11, 12, 14 and 16 in the said same case have accepted without protest the "termination of employment benefits", provided under the redundancy scheme on the basis of which the termination of their employment was effected. Their recourse failed because the acceptance of the said benefits without protest deprived them of a legitimate interest in the sense of Article 146.2 of the Constitution.

Regarding the seven remaining Applicants in the said case 87/65 it was argued by counsel on their behalf:-

(1) That the termination of their employment was decided upon in abuse of powers, in view of the fact that they were not redundant due to lack of construction works ordinarily undertaken by the Public Works Department, that they were declared redundant when the Government decided to give such works to outside contractors.

(2) Further, that there has been a material misconception of fact in that the Council of Ministers proceeded to approve the redundancy, and the consequent dismissals, on the mistaken assumption that such scheme had been agreed to by all trade union organisations concerned, whereas one of them, the Pancyprian Federation of Independent Trade Unions (POAS) had not accepted the said scheme.

(3) That, in any event, the *sub judice* decisions were contrary to Articles 21 and 26 of the Constitution.

In granting the application of Applicant in case No. 171/65, but in dismissing the recourses of all Applicants in case No. 87/65, the Court:

Held, I. As regards case No. 171/65:

(1) The name of the Applicant was not included in the lists of those whose services were to be terminated on the ground of redundancy, as such lists were approved

for the purpose by the Council of Ministers; he had been stood off by mistake.

(2) It is clear, therefore, that he is entitled to succeed in his recourse, on the ground that the termination of his employment was effected under a misconception of fact; and as a result such determination is declared to be *null* and *void.*

(3)*(a)* The Applicant in his evidence claimed compensation for the period during which he was unemployed *i.e.* from the date of his dismissal till the date some time thereafter when he had been recalled back and re-employed by the Respondent Ministry.

(b) But the question of such compensation is not a matter for this Court; it is a question which has to be decided, if no agreement can be reached between the parties, by a civil Court under the provisions of paragragh 6 of Article 146 of the Constitution (Note: Article 146.6. of the Constitution reads as follows):

> "6. Any person aggrieved by any decision or act declared to be void under paragraph 4 of this Article or by any omission declared thereunder that it ought not to have been made shall be entitled, if his claim is not met to his satisfaction by the organ, authority or person concerned, to institute legal proceedings in a court for the recovery of damages or for being granted other remedy and to recover just and equitable damages to be assessed by the court or to be granted such other just and equitable remedy as such court is empowered to grant".

Held, II. As regards Applicants Nos. 4, 8, 11, 12, 14 *and* 16 *in case No.* 87/65 *(supra):*

The said Applicants have accepted the "termination of employment benefits", provided for under the redundancy scheme on the basis of which the termination of their employment took place. The acceptance of the said benefits—without having been even alleged that it was made under protest—deprived them of the legitimate interest required under Article 146.2 of the Constitution (see in this respect the Conclusions from the Jurisprudence of the Greek Council of State 1929-1959 pp. 260-261). Note: Article 146.2 of the Constitution reads as follows:-

2. Such a recourse may be made by a person whose any existing legitimate interest, which he has either as a person or by virtue of being a member of a Community, is adversely and directly affected by such decision or act or omission".

Held, III. As regards the recourses of the remaining seven Applicants in the aforesaid case No. 87/65 *(supra)* :-

(1) As to submission (1) of counsel for the Applicants, supra:

(A) In my opinion the Government, through the Council of Ministers (its policy-making organ, see Article 54 of the Constitution) was properly entitled to decide whether, and what, construction works should be given to outside Contractors, and not be undertaken by the Public Works Department, and it was, also, entitled, in the circumstances, to terminate, on the ground of redundancy, the employment of a number of workmen of such Department.

(B) I can find, on the material before me, nothing which would justify this Court in intervening in the matter, in the exercise of its powers under Article 146 of the Constitution.

(2) *As regards submission (2) of counsel for the Applicants, supra*:-

(A) To the relevant submission made by the Ministry of Labour and Social Insurance to the Council of Ministers there was attached copy of an agreement. Which appeared, on the face of it, to have been reached on the 28th May, 1963, between the various trade union organizations concerned (including POAS, *supra*) and the Ministry of Labour in respect of the said redundancy scheme.

(B) It appears that POAS disagreed, *inter alia,* on the issue of principle involved in giving Government construction works to private contractors.

(C) It, is, however, significant that POAS had as its members about 30 out of 636 regular workmen employed in 1963 by the Building Operations Section of the Public Works Department; and there is nothing to show that the remaining trade union organisations were not, at the time, in agreement with the redundancy scheme in question;

and it seems that the Government regarded such organisations as being the main representative labour organisations, for the purpose.

(D) In the circumstances, I cannot conclude—and it was up to the Applicants to satisfy me on this point—that the Council of Ministers, when deciding to adopt the scheme, acted under the influence of a *material* misconception.

(E) On the other hand the final decision of the Council of Ministers of the 12th December, 1963 regarding the implementation of the scheme was, obviously, based on the views of the Joint Labour Committee, on which Committee was not even represented.

(F) In the light of the foregoing I cannot conclude that the validity of the relevant action of the Council of Ministers, which has led to the Respondent Ministry giving the notices of termination of employment complained of in these proceedings, is vitiated by any material misconception; the Applicants failed to discharge the onus of establishing the existence of such misconception.

(3) *Regarding submission (3) of counsel, supra:*

(A) I fail to see how Articles 21 and 26 could be said to have been contravened in the circumstances of this case.

(B) It is not an infringement of the right to form and join a trade union (Article 21) or of the right to enter into contracts (Article 26) to terminate the employment of trade unionists in a manner compatible with the terms of their employment, as it was done in the cases of the Applicants.

Recourse in case 171/65 *succeeds with £25 towards costs in favour of the successful Applicant. Recourse in case No.* 87/65 *fails. No order as to costs.*

Recourse.

Recourse against the termination by the Respondent Ministry of Applicants' employment as workmen of the Public Works Department.

L. Clerides, for the Applicants.

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

Cur. adv. vult.

The following Judgment was delivered by:-

TRIANTAFYLLIDES, J.: In these two cases, which have been heard together in view of the fact that they involve common issues, the several Applicants in case 87/65 and the Applicant in case 171/65 complain against the termination, by the Respondent Ministry, of their employment as workmen of the Public Works Department.

Such termination was in the form of standing off notices to the Applicants on the ground of redundancy.

By a Decision* given on the 6th May, 1967, the preliminary issue regarding the competence of the Respondent to act as it did was determined in favour of the Respondent; it was held that it was the Respondent, and not the Public Service Commission, which was the competent organ for the purpose.

Out of the eighteen Applicants in Case 87/65, we are now concerned only with thirteen, because Applicants Nos. 5, 6, 10, 13 and 15 have withdrawn their recourses during the proceedings.

The various Applicants in these cases were notified on divers dates in 1965 that they were being stood off on the ground of redundancy. This course was taken in accordance with a redundancy scheme for workmen of the Public Works Department which was adopted by Government in 1963 and was implemented in 1965 (see *exhibit 4*).

As stated in evidence by witness Andreas Soteriou, who was at the material time a Technical Assistant, at the Headquarters of the Public Works Department, dealing with labour matters, the several dates of the termination of the employment of the Applicants are set out in a table, *exhibit 1*, which he prepared; and, as it appears from this table and as witness Soteriou has said in evidence, some of the Applicants were employed even after the dates of the notices of termination of employment complained of in these proceedings.

It is, indeed, somewhat difficult, in the case of some of the Applicants, to discover, from the material before the Court, when exactly did their services come finally to an end, as per the aforesaid redundancy scheme; but as in these proceedings the Court is not concerned with questions of compensation but only with the validity of the termination of the employment of the Applicants, the exact dates

*Decision reported in (1967) 3 C.L.R. 279.

on which such termination finally took effect are not, really, material factors — there being no allegation that these recourses are out of time.

I propose, at this stage, to deal with the claim of Applicant in Case 171/65:

It has transpired during the proceedings that his name was not included in the lists of those whose services were to be terminated on the ground of redundancy, as such lists were approved for the purpose by the Council of Ministers; this has been stated in evidence by witness Soteriou. This Applicant has told the Court, in evidence, that some time after his dismissal he was recalled back and re-employed, and that he was told that he had been stood off by mistake, as he was not among the redundant personnel; and his evidence on this point did not appear to be challenged by the Respondent's side.

It is clear, therefore, that he is entitled to succeed in his recourse, on the ground that the termination of his employment, against which he has made the recourse, was effected under a misconception of fact; and, as a result, such termination is declared to be *null* and *void* and of no effect whatsoever.

In his evidence this Applicant said that he claims compensation for the period during which he was unemployed, as a result of the erroneously effected termination of his employment; but the question of such compensation is not a matter for this Court; it is a question to be decided upon, if no agreement can be reached between the parties, by a civil Court, under Article 146.6 of the Constitution.

I come now to the claims of the Applicants in Case 87/65:

It has been stated in evidence by witness Soteriou, and it has not been denied, that Applicants Nos. 4, 8, 11, 12, 14 and 16 have accepted the "termination of employment benefits", provided for under the redundancy scheme on the basis of which the termination of their employment took place. In view of this fact, I am of the view that, in any case, they cannot succeed in these proceedings, because the acceptance of the said benefits — without having been even alleged that it was made under protest — deprived them of a legitimate interest, in the sense of Article 146.2 of the Constitution (see, in this respect, the Conclusions from the Jurisprudence of the Greek Council of State, 1929-1959, p. 260-261).

The main issue which has been raised by the Applicants, when their recourse was filed, and which has been pressed right through the proceedings, has been that the termination of their employment was decided upon in abuse of powers, in view of the fact that they were not really redundant due to lack of construction works ordinarily undertaken by the Public Works Department, but they were treated as redundant when the Government decided to give such works to outside contractors.

Irrespective of the causes of the redundancy, the fact remains that it was found by Government that it was uneconomical to employ in the Building Operations Section of the Public Works Department a large number of regular employees of various trades (see Submission 475/63 made to the Council of Ministers by the Minister of Labour and Social Insurance on the 1st June, 1963 — *exhibit 15*). As a result, it was decided to terminate the employment of a number of these employees and a redundancy scheme was adopted for the purpose (see Decision 3179 taken by the Council of Ministers on the 11th July, 1963 — *exhibit 14*).

In my opinion the Government, through the Council of Ministers (its policy-making organ, see Article 54 of the Constitution) was properly entitled to decide whether, and what, construction works should be given to outside contractors, and not be undertaken by the Public Works Department, and it was, also, entitled, in the circumstances, to terminate, on the ground of redundancy, the employment of a number of the workmen of such Department. I can find, on the material before me, nothing which would justify this Court in intervening in the matter, in the exercise of its powers under Article 146 of the Constitution.

Another submission made on behalf of the Applicants has been that the Council of Ministers proceeded to approve the redundancy scheme, and the consequent dismissals, on the mistaken assumption that such scheme had been agreed to by all trade union organizations, which had as members workmen who were affected by it; it has been contended that, in fact, one such organization, the Pancyprian Federation of Independent Trade Unions (POAS), had not accepted the said scheme.

The position in this respect appears, on the material before the Court, to be as follows:

One of the trade unions coming under POAS, the Independent Trade Union of Government Workers, had as its members about 30 out of the 636 regular workmen employed in 1963 by the Building Operations Section of the Public Works Department.

As stated in Submission 475/63 *(exhibit 15)* — made by the Minister of Labour and Social Insurance to the Council of Ministers on the 1st June, 1963 — there were protracted negotiations, as from January, 1963, between the representatives of trade union organizations (PEO, SEK, POAS and the Turkish Federation of trade unions) in relation to the dismissals of, and the scheme for, the redundant personnel in the Building Operations Section of the Public Works Department.

To the said Submission there was attached copy of an agreement which appeared, on the face of it, to have been reached on the 28th May, 1963, between the trade union organisations and the Ministry of Labour; though such agreement was signed only by the Minister of Labour and not, as yet, by the trade unionists, it was stated in the Submission that agreement had been reached accordingly.

The General Secretary of POAS, Mr. K. Nathanael, has stated in evidence that POAS at no time did sign such agreement, accepting the relevant redundancy scheme; he explained that POAS disagreed as to the number of the workmen to be dismissed as redundant, and, also, on the issue of principle involved in giving Government construction works to private contractors; he did agree, however, that the redundancy scheme had adopted, more or less, the views of POAS on the subject of the compensation to be paid to those to be dismissed.

There is nothing to show that the remaining trade union organizations were not, at the time, in agreement with the redundancy scheme; and it seems that Government regarded such organizations as being the main representative labour organizations, for the purpose; this is clearly to be derived from the Regulations adopted by the Council of Ministers on the 20th December, 1962, when setting up the Joint Labour Committee in relation to matters affecting Government workmen (see *exhibit 11*); POAS had not been admitted, thereunder, to membership of such Committee.

In the circumstances, bearing in mind the small number of

affected Public Works Department workmen who came under the strength of POAS, the fact that the main representative trade union organizations had apparently agreed to the redundancy scheme, and that POAS, itself, had disagreed therewith only regarding the number of workmen to be dismissed and on an issue of principle unconnected with the provisions, as such, of the scheme, I cannot conclude — and it was up to the Applicants to satisfy me on this point — that the Council of Ministers, when deciding on the 11th July, 1963, (see *exhibit 14*) to adopt the scheme, acted under the influence of a *material* misconception, in that it may have been thought that POAS had agreed to the scheme in question.

Moreover, it is worth bearing in mind that any possible misconception, regarding agreement by POAS to the redundancy scheme, cannot, really, be treated as being material, because the said scheme was conferring upon those to be dismissed greater benefits than those to which they would be normally entitled under the relevant Regulations governing their employment (see *exhibit 2*); and under which Regulations, regular workmen such, as the Applicants, could have been dismissed for redundancy, even if the scheme had not been adopted. So, the Council of Ministers, in approving the scheme, was not taking a decision depriving any workmen of vested rights — in which case the consent of all the trade union organizations, to which such workmen belonged could, conceivably, be regarded as being desirable.

It is to be noted, at this stage, that on the 11th July, 1963, the Council of Ministers adopted the redundancy scheme in question for the purpose, *inter alia*, of enabling the necessary financial appropriations to be secured, but it did not decide on its immediate implementation, too.

Such decision was taken later, as follows:-

On the 5th December, 1963, the Ministry of Labour and Social Insurance made Submission 967/63 to the Council of Ministers (see *exhibit 16*) in which it was stated that the representatives of the trade unions, who had been briefed about the "details" of the redundancy scheme by the Minister of Labour and Social Insurance, had expressed a number of reservations thereon, and made certain suggestions, mainly in connection with the time-span of its implementation. It was added that, eventually, full agreement had been reached and the only point for consideration was the timing of the implementation of the scheme. It was stated, further, that

at a meeting, on the 15th November, 1963, the Joint Labour Committee had unanimously approved a recommendation to the Council of Ministers — set out in the submission — regarding the implementation of the scheme.

As a result the Council took, on the 12th December, 1963, Decision 3583 (see *exhibit 5*) authorizing the implementation of the scheme in accordance with the recommendation of the Joint Labour Committee.

The contents of Submission 967/63 *(exhibit 16)* show, indeed, that no formal agreement with the trade unions had been signed earlier, and that there were matters, regarding details of the scheme, which were discussed further, in between the two relevant Decisions of the Council of Ministers.

So when the Council decided, *finally*, on the 12th December, 1963 *(exhibit 5)* as to the implementation of the scheme, it could not have been labouring under any misconception, material or otherwise, to the effect that a formal agreement had been signed, by the trade union organizations involved in the negotiations, and particularly by POAS, on the 28th May, 1963 — even if the fact of the non-signing by the trade unionists of such agreement had not been duly noticed earlier.

The decision of the Council *(exhibit 5)* regarding the implementation of the scheme was, obviously, based on the views of the Joint Labour Committee, the recommendations of which the Council accepted in full. As already pointed out, on such Committee POAS was not represented; and this fact, which must have been well-known to the Council, shows clearly that for the Council what mattered were the views of the main representative trade union organisations, and not of any other trade union organization, such as POAS.

In any case, from a letter addressed, *inter alia*, to the President of the Republic, who is also the President of the Council of Ministers, and to two Ministers, members of the Council, on the 23rd November, 1963, by the General Secretary of POAS, witness Nathanael (see *exhibit 6*), it must have been known, when the decision of the 12th December, 1963 was taken by the Council, that POAS was still objecting to the policy regarding Government construction works, which had led to the redundancies among Government workmen; but it is quite obvious, too, from the contents of such

letter that POAS, at the time, was not objecting to any essential term of the redundancy scheme, as such.

In the light of all the foregoing I cannot conclude that the validity of the relevant action of the Council of Ministers, which has led to the Respondent Ministry giving the notices of termination of employment complained of in these proceedings, is vitiated by any material misconception; the Applicants have failed to discharge the onus of establishing the existence of such a misconception.

The said notices were not given until 1965 — as the implementation of the redundancy scheme must have been, apparently, delayed by the anomalous situation in the Island which supervened soon after the Decision of the Council of Ministers of the 12th December, 1963; then, instructions regarding implementation of the scheme were given on the 18th June, 1965, by means of a circular of the Director of the Public Works Department addressed to all District Engineers of the Department (see *exhibit 4*).

Before concluding this judgment I would like to dwell very shortly on the submission of counsel for the Applicants that the termination of the employment of his clients conflicts with Articles 21 and 26 of the Constitution, and say that, on the material before me, I do fail to see how such Articles have been contravened, in the circumstances.

It is not an infringement of the right to form and join a trade union (Article 21) or of the right to contract (Article 26) to terminate the employment of trade unionists in a manner compatible with the terms of their employment, as it was done in the cases of the Applicants.

For all the reasons in this judgment recourse 87/65 fails and is dismissed accordingly.

Regarding costs I have decided to award to the successful Applicant in 171/65 £25 towards costs, and to make no order as to costs against the Applicants in 87/65; they lost their regular jobs, due to a change in Government policy, and they should not be penalized with costs.

Orders, and orders as to costs, in terms.