

1970
Oct. 29

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ANDREAS
LARDIS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

[Loizou, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS LARDIS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 115/70).

Recourse under Article 146 of the Constitution—Time—Period of 75 days prescribed by Article 146.3 within which the recourse has to be filed—In the instant case the recourse was not filed within such period of 75 days as from the date when the sub judice decision was communicated by letter to the Applicant—Recourse out of time—Dismissed on that ground.

Time—Recourse—Article 146.3 of the Constitution—See supra.

The facts sufficiently appear in the judgment of the Court dismissing the recourse on the ground that it was not filed within the 75 days prescribed by paragraph 3 of Article 146 of the Constitution.

Cases referred to:

Geodelekian and Another and The Republic (1969) 3 C.L.R. 428,
and on appeal (reported in this Part at p. 64, *ante*).

Recourse.

Recourse against the validity of the decision of the Respondent to promote the two Interested Parties to the post of Assistant Collector of Customs in preference and instead of the Applicant.

A. Eftychiou, for the Applicant.

L. Loucaides, Senior Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following judgment was delivered by:-

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LOIZOU, J.: By this recourse the Applicant challenges the validity of the decision of the Respondents, the Public Service Commission, to promote the two Interested Parties, Georghios Angelides and Anastassios Philippou to the post of Assistant Collector of Customs with effect from the 1st August, 1967, in preference and instead of the Applicant. In fact his complaint is that his own promotion to the same post was only with effect from the 1st December, 1967.

By their Opposition the Respondents allege, *inter alia*, that the recourse is out of time and on the joint application of the parties the Court has decided to hear and determine this question in the first instance. Learned counsel appearing in the case have this morning addressed the Court on this issue.

The history of events in this case, in so far as relevant to this issue, is briefly as follows:

At its meeting of the 4th December, 1967, the Public Service Commission decided to promote the two Interested Parties and two other officers, all of whom were at the time holding the post of Customs and Excise Officer, 1st Grade, to the post of Assistant Collector of Customs and Excise. The promotions were with effect from the 1st August, 1967. The minutes of this meeting are attached to the Opposition and have been marked as *exhibit 1*.

On the following day, the 5th December, 1967, the Commission held another meeting and at this meeting they decided to promote the Applicant, who was also then a Customs and Excise Officer, 1st Grade and three others, to the post of Assistant Collector but with effect from the 1st December, 1967. At this same meeting the Commission decided to promote the two Interested Parties and some other officers to the post of Collector of Customs with effect from the 1st December, 1967.

At another meeting of the Commission, held on the 8th December, 1967, the Commission decided to promote the Applicant and another officer to the post of Inspector of Customs with effect from the 4th December, 1967. The minutes of this last meeting are also attached to the Opposition and have been marked as *exhibit 4*.

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The Applicant was, by letters dated 15th December, 1967, and 18th December, 1967, informed by the Commission of their decision to promote him and was at the same time offered promotion to the two posts. By his letter dated 27th December, 1967, (*exhibit 3*) the Applicant accepted the offers for promotion with reservation of his right as regards the dates of his promotion and this in view of the fact that the two Interested Parties were given seniority over the Applicant.

On the 1st February, 1968, the Applicant wrote another letter to the Commission (*exhibit 5*); he referred to his previous letter of the 27th December, 1967, and expressed his dissatisfaction and disappointment that the dates of the promotions of the two Interested Parties were prior to the dates of his own promotions. He further asked the Commission to reconsider their decision regarding the dates. The concluding paragraph of this letter reads as follows:

“ I hope that you will sympathize with my petition and that, in the sake of justice, you will consider it favourably. I warmly request for your reply at your earliest convenience and, in any case, in sufficient time before my constitutional rights expire”.

This letter of the Applicant was considered by the Commission at their meeting of the 26th February, 1968, and they decided to reject his request. He was informed of the decision of the Commission by letter dated 1st March, 1968, (*exhibit 7*) which reads as follows:

“ I am directed to refer to your letter dated 1st February, requesting that your promotion to the post of Inspector may be back-dated, and to inform you that the Public Service Commission, after considering the matter, has decided that your request was unwarranted and that it should be turned down”.

The promotions of the Applicant, the two Interested Parties and the others to the post of Collector of Customs and Inspector of Customs were challenged by one *Vahak Geodelekian and Another* in cases Nos. 10/68, 51/68 and 110/68. (See *Geodelekian and Another* and *The Republic* (1969) 3 C.L.R. 428). The said promotions were eventually declared by the Supreme Court, in Revisional Jurisdiction Appeal No. 63, to be *null and void* and of no effect. (See *Geodelekian and The Republic* (reported in this Part at p. 64 *ante*).

On the 19th March, 1970, the Commission wrote a letter to the Applicant informing him of this fact and of the consequences. This letter is *exhibit 8* in these proceedings. I consider it pertinent to set out this letter in full:

“Ενετάλην όπως αναφερθῶ εἰς τὴν ἀπὸ τῆς 4ης Δεκεμβρίου, 1967, προαγωγὴν σας εἰς τὴν μόνιμον καὶ συντάξιμον θέσιν Ἐπιθεωρητοῦ εἰς τὸ Τμῆμα Τελωνείων τοῦ Ὑπουργείου Οἰκονομικῶν, καὶ γὰρ σᾶς πληροφορήσω ὅτι τὸ Ἀνώτατον Δικαστήριον, ἐν τῇ Ἀναθεωρητικῇ Αὐτοῦ Δικαιοδοσίᾳ, διὰ τῆς ὑπὸ ἡμερομηνίαν 17ης Φεβρουαρίου, 1970, ἀποφάσεώς του εἰς τὴν Ἐφεσιν ὑπ’ ἀριθμὸν 63 (Βαχὰκ Γκεοδελεκιάν ἐξ Ἀμμοχώστου ἐναντίον τῆς Δημοκρατίας — ἴδετε Προσφυγὰς ὑπ’ ἀριθ. 40/68, 51/68 καὶ 110/68) — ἐκήρυξεν τὴν ὑπὸ τῆς Ἐπιτροπῆς Δημοσίας Ὑπηρεσίας ὡς ἄνω προαγωγὴν σας ὡς ἄκυρον καὶ ἐστερημένην οἰοῦδήποτε νομικοῦ ἀποτελέσματος.

2. Ἐν ὄψει τῶν ἀνωτέρω ὑμεῖς θὰ κατέχητε τὴν μόνιμον καὶ συντάξιμον θέσιν Βοηθοῦ Τελώνου, εἰς τὸ Τμῆμα Τελωνείων τοῦ Ὑπουργείου Οἰκονομικῶν, ὡς ἡ ἐπιστολὴ μου ὑπὸ τὸν αὐτὸν ὡς ἄνω ἀριθμὸν τῆς 20ῆς Ἰανουαρίου, 1968.”

The present recourse was filed on the 6th May, 1970, and it is obviously based on the letter *exhibit 8*. At paragraphs 3 and 4 of the statement of facts in the Application it is stated that the Applicant was informed of his appointment to the post of Assistant Collector of Customs and Excise and of the fact that such appointment was with effect from the 1st December, 1967, on the 19th March, 1970. Quite obviously this is not a correct statement. It is clear from the exhibits that the Applicant was given this information as far back as December, 1967.

It was submitted by learned counsel for the Applicant today that the wording of the letter *exhibit 8* indicates that the Commission had, in view of the decision of the Supreme Court in Revisional Jurisdiction Appeal No. 63, reconsidered the promotions of the Applicant and the Interested Parties to the post of Assistant Collector and that, therefore, the said letter amounts to a new decision upon which a recourse may be based.

With all due respect to counsel I cannot agree with this proposition. Quite obviously the letter in question is merely informative and, as stated earlier on, it conveys to the Applicant

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the result of Revisional Appeal No. 63 and further informs him of the consequences of the annulment of the promotions to the post of Assistant Collector of Customs and Inspector of Customs. In my view it does not amount to a decision in the sense of Article 146 and therefore cannot become the subject of a recourse. In effect this recourse is directed against the decision of the Commission taken in December, 1967, and was not therefore filed within 75 days of the date when such decision was communicated to the Applicant as provided by Article 146.3.

In the circumstances this recourse is out of time and has to be dismissed.

Mr. Loucaides: I claim only the £8.— costs awarded against the Applicant on the 13th August, 1970.

COURT: Very well. Case dismissed with £8.— costs against the Applicant.

*Application dismissed;
order for costs as above.*