

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ELIAS CHRISTOFIS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

ELIAS CHRISTOFIS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 55/69).

Public Officers—Appointments and Promotions—Recourse against appointment to the post of warder in the Department of Prisons—Applicant dismissed from his post for misconduct during the pendency of recourse—Applicant has no longer an “existing legitimate interest” in the sense of Article 146:2 of the Constitution—Recourse, therefore, not maintainable—Dismissed.

Recourse under Article 146 of the Constitution—“Existing legitimate interest..... adversely and directly affected by such decision or act or omission”—Such interest must exist not only at the time the act or decision was done or taken, but, also, at any time thereafter till final determination of the relative recourse—See also supra.

Legitimate interest—“Existing legitimate interest.....” in the sense of Article 146.2 of the Constitution—Scope and effect—Time at which such interest must exist—See supra.

By this recourse the Applicant seeks to challenge the validity of the decision of the Respondent Public Service Commission not to appoint him to the post of warder in the Prisons Department and, instead, to appoint the four Interested Parties named in the recourse.

The decision complained of was communicated to the Applicant by letter dated December 18, 1968 and the present recourse was duly filed on February 14, 1969 i.e. within the time prescribed by Article 146.3 of the Constitution. It appears that on June 12, 1969, the Applicant, who at all material times

1970

May 22

—

ELIAS CHRISTOFIS

v.

REPUBLIC
(PUBLIC SERVICE
COMMISSION)

was a warder in the department of prisons on a temporary basis, was dismissed from his post for misconduct, thus becoming no longer eligible for the appointment subject-matter of the present recourse.

The preliminary point was raised by counsel for the Interested Parties that on the facts set out above, the Applicant has no longer any "existing legitimate interest" in the matter in the sense of paragraph 2 of Article 146 of the Constitution and that, therefore, this recourse cannot be entertained. It was argued on behalf of the Interested Parties that the "existing legitimate interest", alleged to have been affected directly and adversely by the administrative act or decision complained of, must exist not only at the time the said act or decision has been done or taken, but, also, at the time of the hearing of the case.

Article 146.2 of the Constitution reads as follows:

"146.2. Such 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".

Adopting the submission made by counsel for the appointees (Interested Parties) and dismissing on that ground the recourse, the Court:-

Held, (1). It is common ground that the Applicant in this case had a legitimate interest at the time when he filed the present recourse (February 14, 1969). The question, therefore, which is posed before me is whether the Applicant still has a legitimate interest when the validity of the act of the Respondent is challenged today in Court (May 22, 1970), in view of his dismissal on June 12, 1969.

(2) Having given the matter my best consideration and in the light of the authorities (see *infra*) I have reached the conclusion that because the Applicant has been dismissed from his post on or about June 12, 1969, for misconduct, he has no longer an existing legitimate interest today and, therefore, cannot complain that another person was employed in that post.

Note: The authorities referred to by the Honourable Judge are:

The decisions of the Greek Council of State in cases: No. 1433/56 and No. 1823/56, reported in the "Decisions of the Council of State" Volume Γ of 1956 at pp. 35 and 547 respectively. *Neophytou and The Republic*, 1964 C.L.R. 280, Conclusions from the Jurisprudence of the (Greek) Council of state 1929-1959 at p. 260; Tsatsos "Recourse for annulment before the Council of State" 2nd edition at p. 42.

1970
May 22
—
ELIAS CHRISTOFIS
v
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

(3) For these reasons this recourse is dismissed.

*Application dismissed.
No order as to costs.*

Cases referred to:

Neophytou and The Republic, 1964 C.L.R. 280 at pp. 292-3;

Chrysostomides and The Greek Communal Chamber, 1964 C.L.R. 397;

Papapetrou and The Republic, 2 R.S.C.C. 61, at p. 64;

Decisions of the Greek Council of State in cases: No. 1433/56 and 1823/56.

Recourse.

Recourse against the decision of the Respondent to appoint the four Interested Parties to the post of Warder in the Department of Prisons in preference and instead of the Applicant.

Chr. HadjiNicolaou, for the Applicant.

S. Nicolaidis, Counsel of the Republic, for the Respondent.

L. Clerides, for the Interested Parties.

Cur. adv. vult.

The following judgment was delivered by:

HADJIANASTASSIOU, J.: In these proceedings, under Article 146 of the Constitution, the Applicant seeks to challenge the decision of the Public Service Commission to appoint Messrs. Andreas Pontikides, Andreas Menikou, Christakis Shakallis and Kostakis Patroklou, to the post of a warder in the

1970
May 22
—
ELIAS CHRISTOFIS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

department of prisons. The Applicant has been appointed on January 8, 1964, as a warder in the department of prisons on a daily temporary basis, and on June 1, 1964, he was appointed again on a temporary monthly basis to the same post.

On September 12, 1968, the Council of Ministers by its Decision No. 8094, authorized, *inter alia*, the filling of twenty vacancies on a permanent basis, in the post of warder in the department of prisons, as well as any other vacancies which might be created as a result of the filling of vacancies in the higher grades.

The post of warder, in accordance with the scheme of service, is a first entry post, and on September 27, 1968, the Public Service Commission at its meeting, decided that the vacancies in the post of warder be advertised, and two weeks allowed for the submission of applications. The advertisement appeared under notification No. 15/65 in the official Gazette on October 11, 1968, and in response to it 66 applications were received. On December 2, 1968, the Public Service Commission decided that 44 candidates only, including the Applicant and the Interested Parties, be called for an interview on December 6, 1968.

On December 6, 1968, the Commission interviewed the Applicant and the interested parties, and its decision was adjourned. The Commission, further, at its afternoon meeting, after considering the merits, qualifications and experience of the candidates interviewed in the morning, as well as their performance during the interview with regard to the alertness of mind, general intelligence and the correctness of answers put to them, and bearing in mind the views expressed by the senior superintendent of prisons on each one of them, decided unanimously that 23 officers, including the Interested Parties, were on the whole the best, and that they be appointed on probation to the permanent post of warder w.e.f. January 1, 1969.

On December 18, 1968, the Public Service Commission wrote to the Applicant informing him that it was not found possible to be selected for appointment to the post of warder in the department of prisons.

As I said earlier, the post of warder is a first entry post, and the duties and responsibilities are as follows:

“ To perform such duties as may be laid down in the Prisons Legislation and Regulations; to be responsible under the supervision of a superior officer, for the observation, welfare, training and discipline of prisoners; in some cases clerical work; and any other duties which may be assigned to him.”

1970
May 22
—
ELIAS CHRISTOFIS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

Qualifications Required:

A minimum of 3 years' secondary school education; knowledge of Turkish in the case of a Greek Officer and Greek in the case of a Turkish Officer would be an advantage; training and experience in any of the trades used in the Prisons (e.g. carpentry, tailoring, plumbing and welding, bookbinding) would be an additional qualification. Age between 19 and 25 years; a height of not less than 5 feet 6 inches; strong physique and exemplary character; good personality and interest and ability in handling prisoners.”

On February 14, 1969, the Applicant, feeling aggrieved because of the refusal of the Commission to appoint him, filed the present recourse. On April 4, 1969, the opposition was filed, to the effect that the decision complained of was properly and lawfully taken after all relevant circumstances were taken into consideration.

On May 8, 1969, the hearing of this case began and, counsel for the Applicant, before concluding the opening of his case, requested the Court for an adjournment because, as he put it: “ As I have been now briefed that some of the Interested Parties were appointed without possessing the necessary qualifications under the scheme of service, I am asking for an adjournment in order to investigate more fully this allegation, and in order to file particulars within a period of fourteen days”. See the record at p. 3.

On May 21, 1969, the particulars with regard to this new ground of law were filed. On July 8, 1969, the Interested Parties filed their opposition, and paragraph 4 reads as follows:—

“ 4. Interested Parties allege the following misgivings of Applicant and contend that by reason thereof Applicant's claims, qualifications and merit for appointment to the

1970
May 22
—
ELIAS CHRISTOFIS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

said post are inferior to the claims of the Interested Parties:-

- (a) On 21 . 5 . 64 he was reprimanded for disobedience and unbecoming behaviour.
- (b) On 23 . 7 . 65 he was reprimanded for negligence of duty.
- (c) On 18 . 1 . 66 he was reprimanded for unjustified absence from lessons.
- (d) On 13 . 4 . 66 he was admonished for not carrying out his duties satisfactorily i.e. carrying out an inquiry in connection with a case of use of drugs by a convict.
- (e) On 7 . 10 . 68 he was reprimanded for presenting himself late at Parade.
- (f) On 19 . 2 . 66 he was reprimanded for unbecoming behaviour.
- (g) On 12 . 11 . 68 he was reprimanded following a complaint by his relatives i.e. his sister for having immoral relations with a woman in such a way as to bring discredit to the Prisons Dept."

On October 15, 1969, counsel for the Interested Parties gave notice to both counsel for the Applicant and the Respondent that he intended to argue on behalf of the Interested Parties that Applicant's recourse cannot proceed inasmuch as Applicant has been dismissed from the service on the 29 . 7 . 69 for misconduct, and hence he has no legitimate interest to proceed with his case. The case was fixed for mention on October 20, 1969, and counsel for the Applicant made this statement:- "I would like to inform the Court that I have already filed a new recourse with regard to the Applicant in this case, because he was dismissed from the service, and intend to proceed with the present case also. I would, therefore, apply for a date for hearing."

On December 4, 1969, counsel for the Applicant, in addressing the Court, had this, *inter alia*, to say:- "In view of the legal argument raised by my learned friend in the opposition on behalf of the Interested Parties, I propose to argue this point first, because if I fail to convince the Court, then this point disposes of the whole of the case". Counsel

then contended that although the Applicant has been dismissed from the service when this case was already before the Court, the Applicant has still a legitimate interest within the ambit of Article 146 of the Constitution. He further invited the Court to take the view that the case of *Kyriakos Chrysostomides and the Greek Communal Chamber*, 1964 C.L.R. 397, should be distinguished, because the facts in that case are entirely different from the present case.

1970
May 22
—
ELIAS CHRISTOFIS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

Counsel for the Interested Parties, on the contrary, has contended (a) that it was an accepted principle that the existing legitimate interest of a party must subsist at the time of the filing of the recourse, and also at the hearing of his case; (b) that although the Applicant had a legitimate interest when he filed this recourse, nevertheless, because he was dismissed from the service, he no longer had such interest for the purpose of proceeding with his case; and because he was no longer in the public service he could not complain that another person was emplaced in his post. He relied on the authority of *Neophytou v. Republic*, 1964 C.L.R. 280 at pp. 292-3.

It is pertinent to add that this contention has also been adopted by counsel for the Respondent.

Now with regard to existing legitimate interest, paragraph 2 of Article 146 of the Constitution reads as follows:-

“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.”

It would be observed that this provision is more or less modelled on the lines of section 48 of the Greek Law No. 3713/28.

I would like to quote a passage from the Greek reports in the “Conclusions from the Jurisprudence of the Council of State” (1929-1959) at p. 260, under the heading “Ένεστώς”.

« Η πρὸς τὴν πράξιν σχέσις τοῦ αἰτοῦντος, ἐξ ἧς πηγάζει τὸ συμφέρον του, δεόν νά ὑφίσταται ἤδη κατὰ τὸν χρόνον τῆς προσβολῆς αὐτῆς, ἡ δὲ βλάβη αὐτοῦ δεόν νά ἔχη ἤδη ἐπέλθει ἢ νά ἐμφανίζεται ὡς λογικῶς ἀναπόφευκτος. Οὕτω τὸ ἔννομον συμφέρον δεόν νά εἶναι ἐνεστώς.»

In English, this passage reads as follows:— “ The Applicant’s relationship to the act from which his interest flows must exist already when the act has been challenged, and his injury must have already taken place or appears reasonably unavoidable. Thus, the legitimate interest must be existing”.

See also the “Recourse for annulment before the Council of State”, 2nd edn., by Tsatsos at p. 42.

In the case of *Theodoros G. Papapetrou and The Republic*, 2 R.S.C.C. 61 at p. 64, it was stated that: “ Once it is a fact that the Applicant had applied to the Public Service Commission for the appointment to the post in question, and that somebody else has been appointed instead to such post, it follows from this fact alone that an existing legitimate interest of his was adversely and directly affected by his not being appointed”.

In fairness, however, to counsel for the Interested Parties, he has conceded during the argument, that the Applicant, in this case had a legitimate interest at the time when he filed the present recourse. The question, therefore, which is posed before me is whether the Applicant still has a legitimate interest when the validity of the act of the Respondent is challenged today in Court.

In the Greek reports of the “ Decisions of the Council of State” reported in 1956 Volume ‘Γ’, there are two cases: The first is No. 1433/56 at p. 35. It was held at p. 36 in Greek:—

« Έπειδή τὸ κατὰ τὸ ἀρθρον 48 τοῦ ν.3713 ἔννομον συμφέρον, τὸ ἀπαιτούμενον πρὸς ἀσκησιν αἰτήσεως ἀκυρώσεως, δέον σὺν τοῖς ἄλλοις νὰ εἶναι καὶ ἐνεστῶς. Ἐν τῇ ἐννοίᾳ δὲ τοῦ ἐνεστῶτος, προκειμένου περὶ προσβολῆς διοικητικῆς πράξεως, οἷα ἡ προσβαλλομένη, δι’ ἧς ἐνεκρίθη ἡ ἐπὶ τῆς γραμμῆς Ὁμοιοῖας - Πειραιῶς κυκλοφορία τῶν τεσσάρων λεωφορείων τῆς παρεμβαινούσης περιλαμβάνεται, κατὰ τὴν ἔννοιαν τοῦ νόμου, καὶ ἡ προϋπόθεσις, ὅπως τὸ ἔννομον συμφέρον πηγάζῃ ἐξ εἰδικῆς τινὸς σχέσεως τοῦ διοικουμένου πρὸς τὴν προσβαλλομένην ὑπ’ αὐτοῦ ἀτομικὴν διοικητικὴν πράξιν, ὑφισταμένης κατὰ τε τὸν χρόνον τῆς ἐκδόσεως τῆς πράξεως ταύτης καὶ κατὰ τὸν χρόνον τῆς προσβολῆς αὐτῆς.»

It would be observed that the legitimate interest required must exist both at the time of the making of an act and at the time when its validity is challenged.

The second case is No. 1823/56 at p. 547. It was held at p. 549 that the legitimate interest must arise out of a legal relationship of an Applicant which is already in existence when the act concerned is challenged. See also *Costas Neophytou* and *The Republic*, 1964 C.L.R. 280.

Having given the matter my best consideration, and in the light of the authorities to which I have referred, I have reached the view that because the Applicant has been dismissed from his post on or about the 12th June, 1969, for misconduct, he has no longer an existing legitimate interest today and, therefore, cannot complain that another person was emplaced in that post.

For the reasons I have endeavoured to explain, this recourse is dismissed. No order as to costs.

*Application dismissed;
no order as to costs.*

1970
May 22

—
ELIAS CHRISTOFIS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)