

STELIOS CHRISTODOULOU AND ANOTHER,
Appellants (Interested Parties),
and

STELIOS
CHRISTODOULOU
AND ANOTHER
v.
THEODOROS
KOUALI
AND
OTHERS

1. THEODOROS KOUALI,
2. THE REPUBLIC OF CYPRUS, THROUGH
 - (a) THE COMMANDER OF POLICE,
 - (b) THE MINISTER OF INTERIOR,

Respondents.

(Revisional Jurisdiction Appeals Nos. 78 & 79).

Promotions—Police Force—Promotions to the rank of Inspector from that of Sub-Inspector—Annulment of, on the ground that the Interested Parties (now appellants) have not passed the “qualifying examinations” required by regulation 6(2)(b) of the Police (Promotion) Regulations, 1958—Appeal against such annulment allowed—Because of misdirection on the question of construction of said regulation 6(2)(b)—Such examinations required only in respect of promotions from the rank of Sergeant to that of Inspector or Sub-Inspector, and not, as in the present case, in respect of promotions from the rank of Sub-Inspector to that of Inspector—Cf. Section 2 of the Police Law, Cap. 285 (definition of “Inspector”: it includes also Sub-Inspector); Regulation 2(1), 5(1) and 6(3)(b) of the said Police (Promotion) Regulations, 1958.

Police Force—Promotions—See supra; see also infra.

Administrative Law—Police Force—Promotion from the rank of Sergeant to that of Sub-Inspector made in August, 1960, apparently under regulation 6(3)(b) of the Police (Promotion) Regulations 1958—Legality thereof not challenged directly within the prescribed time limit—It follows that under the general principles of administrative law, it cannot be challenged indirectly in a recourse for annulment of another act or decision made after that time limit—Therefore, the legality of the aforesaid promotions of August, 1960, cannot be challenged indirectly by the recourses in the present consolidated cases, whereby the promotions of the appellants (the Interested Parties) to the rank of Inspector from the rank of Sub-Inspector are challenged (and which were both made in July 1968)—See

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decision of the Greek Council of State *No. 1604/56 reported in Digest of Cases of the Greek Council of State pp. 284–285 ; see also Conclusions of the Jurisprudence of the (Greek) Council of State 1929–1959, at p. 226.*

In this case the Supreme Court, sitting as a Court of Appeal in its revisional jurisdiction, reversed the judgment of a single Judge of this Court and held that : (1) On the true construction of regulation 6(2)(b) of the Police (Promotion) Regulations, 1968, the “qualifying examinations” referred to therein are required only in the cases of promotion of a police officer holding the rank of Sergeant and not, as in the present instance, the rank of Sub-Inspector ; (2) in accordance with the principles of administrative law, the legality of an administrative act or decision as *e.g.* promotions made, say, in August 1960 cannot be challenged indirectly in a recourse for annulment of another act or decision such as a promotion made as in the present case in July, 1968. The salient facts of this case are very briefly as follows :

In these consolidated appeals the two interested parties appeal against the decision of a single Judge of this Court annulling their promotions made in July, 1968, by the Commander of Police from the rank of Sub-Inspector to that of Inspector of Police. *This judgment is reported in (1970) 3 C.L.R. 441.* The promotions of the appellants were challenged by two Sub-Inspectors in recourses 267/68 and 333/68, respectively, which were heard together by the learned Judge in the first instance. It is common ground that the two interested parties (now appellants) were both promoted on August 16, 1960, from the rank of Sergeant to that of Sub-Inspector ; and that neither of them had passed the “qualifying examinations”, referred to hereinbelow, on the occasion of their two respective said promotions in August, 1960 and July, 1968 (*supra*).

The learned Judge delivered his judgment on December 31, 1970 (which is set out *post* immediately after the Judgment of the Court) annulling the aforesaid promotions, made in July, 1968 (*supra*), of both interested parties (now appellants), as being contrary to regulation 6(2) of the Police (Promotion) Regulations, 1958.

Regulation 6(2) provides :

“ A Sergeant to be qualified for promotion to the rank of Inspector must—

(a)

(b) have passed the qualifying examinations.

(c) (d) (e) ”

And regulation 6(3) of the same Regulations provides :

“(3) Notwithstanding anything in this Regulation contained the Chief Constable (now Commander of Police) :

(a)

(b) may promote any police officer who shows marked ability or exceptional aptitude for special work, irrespective of his length of service, and whether qualified by examination or not.”

On the other hand, under section 2 of the Police Law, Cap. 285, “ ‘Inspector’ means an Inspector of police and includes Chief Inspector and Sub-Inspector ”.

It was never disputed that the last promotions (in July, 1968) of the appellants (Interested parties) were not made under regulation 6(3) (*supra*).

The learned trial Judge in construing regulation 6(2)(b) (*supra*) stated : “ In my view it was not legally possible to promote them (the appellants) to Inspectors . It involved disregarding the express provision in paragraph 2 of regulation 6, that to be qualified for promotion to Inspector a Sergeant must have passed the qualifying examinations ; and I cannot construe paragraph (2) of regulation 6 in a manner defeating its object, by holding that a sergeant can become an Inspector, without possessing an essential qualification for such promotion, having become first a Sub-Inspector at a time when he did not possess such qualifications ”

It was argued by counsel on behalf of the appellants that the learned trial Judge misinterpreted the effect of regulation 6(2)(b) (*supra*), because its real intention is that the “ qualifying examinations ” for promotion to the rank of Inspector is only required in respect of an officer holding the rank of Sergeant and not that of Sub-Inspector as it is the case of the appellants.

Allowing the appeal the Supreme Court .

Held, (1). Once both appellants were promoted on August 16, 1960, from Sergeant to the rank of Sub-Inspector and in the absence of any evidence to the contrary, we are bound to take it that the then appropriate administrative organs acted

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properly, and that such promotions were made at the time (*viz.* August, 1960) under regulation 6(3)(*b*) (*supra*) apparently because these two police officers had shown marked ability in their work.

(2) In view of the definition of “Inspector” in section 2 of the Police Law, Cap. 285 (*supra*), and in accordance with the trend of the decisions of the Greek Council of State, once an officer has been promoted and the legality of his promotion has not been challenged by a recourse made within the proper time limit, it cannot be challenged indirectly in a recourse for annulment of another act or decision made after that time limit (see the Conclusions of the Jurisprudence of the (Greek) Council of State, p. 226 ; see also the decision of the Greek Council of State No. 1604/56 in Digest of Cases of the Greek Council of State, pp. 284–285).

(3) In our view the true construction of regulation 6(2)(*b*) (*supra*) is that the “qualifying examinations” for promotion to the rank of Inspector are only required in the case of an officer who is a Sergeant and not one who is a Sub-Inspector as in the present case. We are inclined to add that our view is supported by the combined effect of the definition of “Inspector” in section 2 of the Police Law Cap. 285 (*supra*) and of regulation 2(1) of the Police (Promotion) Regulations 1958, where it is stated that no further examination shall be necessary for promotion above the rank of “Inspector” (which includes “Sub-Inspector”, *supra*).

(4) It follows that it was reasonably open to the Commander to prefer the appellants for promotion ; we would therefore reverse the judgment of the learned Judge and allow the appeal without costs.

Appeal allowed. No order as to costs.

Cases referred to :

Decision of the Greek Council of State No. 1604/56 in Digest of Cases of the Greek Council of State pp. 284–285.

Appeal.

. Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Triantafyllides, J.) given on the 31st December, 1970, (Revisional Jurisdiction Cases Nos. 267/68 and 333/68) whereby the decision to promote the Appel-

lants to the rank of Inspector in the Police Force was declared null and void.

A. Triantafyllides, for the Interested Parties, appellants.

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

Cur. adv. vult.

STAVRINIDES, J. : Mr. Justice Hadjianastassiou will deliver the judgment of the Court.

HADJIANASTASSIOU, J. : In these consolidated revisional jurisdiction appeals, the interested parties appeal against the decision* of a single Judge of this Court, dated December 31, 1970, who has heard together both recourses Nos. 267/68 and 333/68 in the first instance.

The appellants, in accordance with the comparative table (*exhibit* 4), were appointed in the police force of Cyprus on October 1, 1949, and on July 20, 1942, respectively. The first one was promoted to the rank of Sergeant on June 1, 1958, and on August 16, 1960, he was again promoted to the rank of Sub-Inspector. The second appellant was promoted to the rank of Sergeant in August, 1955, a rank which he held until 1959 when on October 25, 1959, he was detained as a political detainee by the then Colonial Government. On December 15, 1959, he was reinstated in the police force, and on August 16, 1960, he was promoted to the rank of Sub-Inspector.

On May 21, 1968, the Commander of Police addressed a letter (*exhibit* 11) to the Minister of Interior on the question of the filling of vacancies in the police force, and of his decision to promote, among other police officers, Sub-Inspectors S. T. Christodoulou and M. Tabakis to the post of Inspector.

On July 18, 1968, the Director-General of the Ministry of Interior, in reply, said that the Minister approved the promotion of those officers whose names appear in his letter *exhibit* 12. Thus the promotions were made by the Commander of Police with the approval of the Minister of Interior in accordance with the provisions of s. 2 (2) of the Police (Amendment) Law, 1966, amending s. 13 of the basic law (Cap. 285).

* Reported in (1970) 3 C.L.R. 441.

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The promotions of these two appellants, who were also strongly recommended by their divisional commanders, were attacked by Sub-Inspectors Theodoros Koualis and Costas Zavros, in recourses 267/68 and 333/68, filed on July 31, 1968, and September 25, 1968, respectively, on a number of points, including the contention that with regard to the promotion of Sub-Inspector Tabakis it was made contrary to the Police Regulations because he was not qualified for promotion as he had not passed the qualifying examinations, and because there was no vacant post in the establishment to which he could be promoted.

On September 30, 1968, the opposition was filed and was based, *inter alia*, on these grounds of law :—

Paragraph 2 is in these terms in Greek :—

«2. Ἡ προαγωγή τῶν Στ. Χριστοδούλου καὶ Μ. Ταπάκη εἰς τὴν αὐτὴν θέσιν ἐγένετο ὑπὸ τοῦ Ἀρχηγοῦ τῆς Ἀστυνομίας τῇ ἐγκρίσει τοῦ Ὑπουργοῦ Ἑσωτερικῶν τοῦ πρώτου ἑρμηνεύοντος τὸν Κανονισμὸν 6 (2) τῶν περὶ Προαγωγῶν ἐν τῇ Ἀστυνομίᾳ Κανονισμῶν τοῦ 1968 ὡς παρεμποδίζοντος μὲν τὴν προαγωγὴν μὴ προσοντούχου λοχίου εἰς ἀνθυπαστυνόμου ἀλλ' ἐπιτρέποντος τὴν προαγωγὴν τοιοῦτου λοχίου ἐκ τῆς θέσεως τοῦ ἀνθυπαστυνόμου εἰς ὑπαστυνόμου».

It is to be observed that the legal position raised in para. 2 of the opposition is that the Commander of Police who made the promotions of the two appellants, interpreted Reg. 6 (2) of the Police (Promotion) Regulations 1958, as meaning that the Commander had powers to promote a Sub-Inspector to the rank of an Inspector.

Paragraph 3 reads as follows :—

«3. Ἡ προαγωγή τῶν Στ. Χριστοδούλου καὶ Μ. Ταπάκη ὡς προκύπτει ἐκ τῶν σχετικῶν στοιχείων δὲν ἐγένετο δυνάμει τοῦ Κανονισμοῦ 6 (3) (β) τῶν προειρημένων κανονισμῶν.»

This passage read in Greek shows quite clearly that counsel of the Republic, who also appeared on behalf of the interested parties, admits that their promotion to the rank of Inspector was not made under Reg. 6 (3) (b).

On November 25, 1968, both recourses were heard together and after some adjournments for the reasons appearing on the record, judgment was reserved on September 22, 1969. On December 31, 1970, the trial Court delivered its judgment, which is reported in (1970) 3 C.L.R. 441. The Court, it being common ground that the inte-

rested parties had not passed the qualifying examinations for promotions when they were promoted to Inspectors, said at p. 446 :—

“ As it has not been the case for the respondents that the interested parties Tabakis and Christodoulou were promoted by virtue of Regulation 6 (3), and as, moreover, there is nothing on record before me to show that they were promoted thereunder, I have to declare their *sub judice* promotions null and void and of no effect whatsoever, in that they were made contrary to law, *viz.* contrary to Regulation 6 (2). In any case, I would also annul their promotions as having been made in the circumstances of the present occasion, in excess and abuse of powers, because it cannot, as a result, be said that it is reasonably open to the appropriate organs to promote (in the normal course and not exceptionally under Regulation 6 (3) candidates who have not passed the qualifying examinations for a particular rank, instead of a recommended candidate—such as, for example, the applicant in case 267/68—who has done so.”

On January 28, 1971, the interested parties whose promotion has been annulled appealed to the Full Court, and the points raised by the notice of appeal are :—

“ 1. Although the Court decided that there existed sufficient reasons which rendered it reasonably open to the appropriate organs to promote appellants instead of respondents-applicants, nevertheless, the Court annulled appellants' promotion on the ground that they had not passed the qualifying examinations under Police Regulations 1958 (Reg. 6 (2) (b)).

2. Appellants, however, ever since 16.8.60, were promoted to Sub-Inspectors and their promotion had never been challenged. Consequently, their promotions from Sub-Inspector to Inspector could not be vitiated due to the lack of the qualifying examinations especially as the term Inspector includes Sub-Inspector.

3. If for the purpose of the aforesaid Police Regulations the term Inspector does not include Sub-Inspector then it will be submitted that the qualifying examinations are only necessary for the promotion from Sergeant to Inspector and not for the promotion from Sergeant to Sub-Inspector.

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4. It will further be submitted that the trial Court erred in deciding that Regulation 3 (b) of the aforesaid Police Regulations could not be invoked in favour of appellants."

The general principles governing promotions in the police force, are set out in the Police (Promotion) Regulations, 1958.

Regulation 2 (1) is in these terms :—

" (1) Promotion from Constable to Sergeant and from Sergeant to Inspector shall be by selection from amongst those qualified to be promoted. No further examination shall be necessary for promotion above this rank.

(2) "

There is no doubt that the object of the examinations in accordance with the Regulations is to test the candidates' educational and theoretical knowledge.

I then turn to Regulation 5 (1) which reads :—

" A member of the Force promoted shall not be confirmed in the rank to which he has been promoted until a period of two years has elapsed ;

Provided that this period may be reduced to not less than one year at the discretion of the Chief Constable.

(2) "

We find it convenient to point out that in the absence of any evidence to the contrary, we take it that the promotion of both appellants from Sergeant to Sub-Inspector has been confirmed by the Commander of Police, in accordance with Reg. 5 (1) above.

With regard to Sergeant's qualifications for promotion, Regulation 6 (2) reads as follows :—

" A Sergeant to be qualified for promotion to the rank of Inspector must—

(a) not have had any greater punishment than a severe reprimand imposed on him for an offence against discipline during the two years immediately prior to his promotion ;

(b) have passed the qualifying examinations ;

(c)

(d) have completed two years' service in the rank of Sergeant, unless the Chief Constable is satisfied that he possesses special qualifications for the performance of the particular duties on which he is to be employed ;

(e) have been recommended by the Board.

(3) Notwithstanding anything in this Regulation contained the Chief Constable :—

(a) may decide that members of the Force recommended by the Board for advancement should attend a short promotion course ;

(b) may promote any police officer who shows marked ability or exceptional aptitude for special work, irrespective of his length of service, and whether qualified by examinations or not."

Regarding the meaning of " Inspector ", no definition appears in these Regulations, and we have, therefore, to turn to the Police Law, Cap. 285, where under section 2 " Inspector " means an Inspector of police and includes Chief Inspector and Sub-Inspector.

The present appeal was argued on behalf of the appellants on two main grounds : (a) That the trial Court misinterpreted the effect of Reg. 6 (2) (b) because its real intention is that the qualifying examinations for promotion to the rank of Inspector is only required by an officer holding the rank of a Sergeant and not of a Sub-Inspector ; (b) that the applicants were not entitled to raise at this stage the illegality of the promotion of the appellants once such promotions from Sergeants to the rank of Sub-Inspector were not challenged at the time eight years ago.

Counsel on behalf of the Republic, having adopted the argument of counsel for the appellants, stated that he was not supporting the judgment of the trial Court.

The learned trial Judge, in construing Reg. 6 (2) (b) had this to say at pp. 445-446 :—

" In my view it was not legally possible to promote them to Inspectors : It involved disregarding the express provision, in paragraph 2 of regulation 6, that to be qualified for promotion to Inspector a Sergeant must have passed the qualifying examinations ; and I cannot construe paragraph (2) of Regulation 6 in a manner defeating its object, by holding

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that a Sergeant can become an Inspector, without possessing an essential qualification for such promotion, having become first a Sub-Inspector at a time when he did not possess such qualification. I would, indeed, be inclined to think that in view of the definition of "Inspector" in section 2(1) of Cap. 285—under which the relevant Regulations were made—a Sergeant cannot become even a Sub-Inspector if he has not passed the qualifying examinations for promotion to Inspector; but I do not have to pronounce on this point in the present proceedings."

Having considered the findings of the learned trial Judge as well as the argument of counsel of the appellants, we are of the view, that the learned trial Judge misdirected himself on the question of construction of Regulation 6(2)(b), and we would, therefore, reverse his judgment for the following reasons:—

(a) that once both appellants were promoted from Sergeant to the rank of Sub-Inspector their promotion was confirmed by the then Chief of Police, and in the absence of any evidence to the contrary, we are bound to take it that the administrative organ acted properly, and that such promotions were made at the time under Regulation 6(3)(b), apparently because those police officers had shown marked ability in their work;

(b) that in view of the definition of "Inspector" in section 2(1) of the basic law, Cap. 285, and in accordance with the trend of the decisions of the Greek Council of State, once an officer has been promoted and the legality of his promotion has not been challenged by a recourse made within the proper time limit, it cannot be challenged indirectly in a recourse for annulment of another act or decision made after that time limit. See the conclusions of the Greek Council of State 1929-1959 at p. 226. See also Decision No. 1604/1956 reported in 1956 of the Digest of Cases of the Greek Council of State, pp. 284-285;

(c) that in our view the true construction of Regulation 6(2)(b) is that the qualifying examinations for promotion to the rank of Inspector are only required in the case of an officer who is a Sergeant and not one who is a Sub-Inspector. We would be inclined to add that our view is also supported by the combined effect of the definition of "Inspector" in section 2(1) of Cap. 285, and of Regulation 2(1), where it is stated that no further examination shall be necessary for promotion above the rank of "Inspector".

For the reasons we have endeavoured to explain, and because in our view it was reasonably open to prefer the appellants for promotion, we would annul the decision of the learned trial Judge, and allow the appeal without costs.

Appeal allowed without costs.

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