1971
Mar. 16
—
GEORGHIOS HJI LOUCAS
v.
REPUBLIC
(CHAIRMAN OF THE COUNCIL OF REINSTATEMENT OF DISMISSED PUBLIC OFFICERS)

[VASSILIADES, P., JOSEPHIDES, STAVRINIDES, L. LOIZOU, HADJIANASTASSIOU, JJ.]

GEORGHIOS HJILOUCAS,

Appellant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE CHAIRMAN OF THE COUNCIL OF REINSTATEMENT OF DISMISSED PUBLIC OFFICERS,

Respondent.

(*Revisional Jurisdiction Appeal No.* 68).

Dismissed Public Officers Reinstatement Law, 1961 (*Law No.* 48 *of* 1961)—*Former Police Officer—Decision of the respondent Council to reinstate appellant on the ground that his retirement from service was not due to pressure exercised either by his superiors or by any Government Agency—Open to the Council on the material before them.*

Collective organ—Council of Reinstatement of Dismissed Public Officers (respondent)—Keeping no minutes of their proceedings other than recording the reasons for their decision—Practice ever since the establishment of the Council—Such failure, regrettable as it may be, is not a reason for annulling the decision complained of, in view of the provisions of section 3(2) *of the said Law—See* further *infra.*

Council of Reinstatement of Dismissed Public Officers—Non-filing of the individual notes taken by members—No reason for annulling the sub judice *decision, because such notes are not formally part of the relevant record—See section* 3(2) *of the statute enabling the Council to regulate their own procedure.*

Collective organ—Hearing of evidence by the respondent Council in the absence of appellant—No ground for annulment of the Council's decision complained of—For the reasons given by the learned trial Judge in his judgment appealed from (*see* Georgios HjiLouca *v.* The Republic (1969) 3 C.L.R. 570, at p. 574 et seq).

This is an appeal by a former Police Officer against the decision of a single Judge of the Supreme Court dismissing his recourse whereby he was challenging the refusal of the respondent Council to reinstate him in the Police Force under

the provisions of the Dismissed Public Officers Reinstatement Law, 1961 (Law No. 48 of 1961) (see *Georghios HjiLouca* v. *The Republic* reported in (1969) 3 C.L.R. 570).

It was argued on behalf of the appellant, *inter alia*, that (*a*) the respondent Council did not keep minutes of their proceedings, (*b*) that certain notes kept by the members of the Council were not placed in the file, but apparently were destroyed, and (*c*) the applicant-appellant was not afforded an opportunity of being present when two of the "crucial witnesses" gave their evidence before the Council.

Dismissing the appeal and affirming the decision appealed from, the Court :

Held, (1). The legislator enabled the statutory collective organ in question (*i.e.* the respondent Council) to regulate their proceedings (see section 3(2) of the said statute). Their failure, therefore, to adopt a procedure requiring the keeping of minutes and the fact that no minutes were kept on this particular occasion, regrettable as it may be, cannot be considered as a reason for annulling the Council's decision. It is in evidence, on the other hand, that such was the practice of the Council ever since their establishment about nine years ago, viz. to keep no minutes other than recording the reasons for their decision.

(2) As to the non-filing of the individual notes kept by some of the members of the Council for the purposes of enabling such members to do their duty, we do not think they are part of the record of the proceedings of such collective organ ; unless, of course, internal regulations or practice otherwise require.

(3) As to the complaint that the appellant was not afforded an opportunity of being present when two of the "crucial witnesses" gave their evidence before the respondent Council, the point was fully dealt with by the learned trial Judge (see *Georghios HjiLouca's* case, *supra*). We agree with *HjiLouca's* case at p. 574, *ubi supra*). We agree with him that it is devoid of merit ; and we need not repeat here what was said in his judgment in this connection.

Appeal dismissed. No order as to costs.

Cases referred to :

Georghios HjiLouca v. *The Republic* (1969) 3 C.L.R. 570, at p. 574 et seq.

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GEORGHIOS HJI LOUCAS
v.
REPUBLIC
(CHAIRMAN OF THE COUNCIL OF REINSTATEMENT OF DISMISSED PUBLIC OFFICERS)

Appeal.

Appeal against the judgment* of a Judge of the Supreme Court of Cyprus, (Triantafyllides, J.) given on the 23rd December, 1969 (Revisional Jurisdiction Case No. 303/68) dismissing appellant's recourse against the decision of the Respondent Council of Reinstatement of Dismissed Public Officers to the effect that the appellant is not an "entitled officer" under the provisions of the Dismissed Public Officers (Reinstatement) Law, 1961 (Law 48 of 1961).

L. Clerides with *R. Gavrielides*, for the appellant.

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

Cur. adv. vult.

The judgment of the Court was delivered by :—

VASSILIADES, P. : The appellant enlisted in the Cyprus Police at the age of 21, on September 10, 1927. Some 28 years later in August, 1955, he applied under section 8 (1) of the Pensions Law, Cap. 311, for retirement. The material part of the section as at that time read :

> " 8. (1). It shall be lawful for the Governor to require or permit any officer to retire from the service .... at any time after he has attained the age of 50 years ..... and retirement shall be compulsory for every officer on attaining the age of 55 years provided . (The Provisos are immaterial in this case) ".

The appellant would have attained the age of 50 on February 2, 1956. His application for permission to retire on pension, was favourably considered ; and was eventually granted. He went on leave prior to retirement as from September 30, 1955 ; and he actually went on pension on February 2, 1956 ; collecting the amount of pension payable to him under the Pensions Law and continuing to draw his pension as provided in the statute and the relevant regulations, ever since.

Conditions in the island in August, 1955, when the appellant applied for retirement, were difficult for all public servants ; especially members of the Police Force owing to the activities of the EOKA organization, which had started in April, 1955, and in which the Greek population of the island, sooner or later, came to be involved, in one way or another. Many Greek Policemen finding their loyalties

* Reported in (1969) 3 C.L.R. 570.

divided between the two sides to the struggle, found the performance of their police duties very strenuous ; and at times dangerous. They certainly found themselves frequently in unenviable situations. Civil Servants found themselves in detention camps ; some left the Service ; some exercised their option to retire (if they could do so) ; some were dismissed ; the great majority continued carrying the heavy burden of a double responsibility : Their duty to the Government and their duty to their people ; the two sides involved in this struggle. Soon after independence, the new Government of the country enacted (in November, 1961) Law 48 of 1961 (amended the following year by Law 5 of 1962) known as " Ὁ περὶ Ἀποκαταστάσεως Δημοσίων Ὑπαλλήλων Νόμος τοῦ 1961 ", the main object of which, as stated in the heading, was the reinstatement of public servants who were dismissed, compulsorily retired, or demoted for political reasons during the period from 1.1.1955 to 19.2.1959.

The appellant applied for compensation under the Law in question ; and when his application was refused, he filed recourse No. 224/1962, challenging the decision of the statutory council which refused his application. His main ground, as one can find it in the statement of facts upon which appellant's present recourse is made, was that he had been " forced to resign from the Police Force on the 31st August, 1955, in circumstances covered by law No. 48/61 ". Again taking the position from the facts stated on behalf of the appellant in support of his recourse, we have it that after a number of adjournments due to the fault of the respondent (the Government of the Republic) the recourse was withdrawn on April 10, 1965, upon an undertaking by the respondent authority to re-examine appellant's case in the light of all available facts.

According to this undertaking, the case was reconsidered ; and eventually, on January 10, 1966, the respondent authority communicated to the appellant their decision that in the circumstances of his retirement, he did not qualify as " an entitled officer " under the statute. The appellant challenged the validity of this decision by filing a second recourse, No. 37/66. This was heard ; and eventually determined* on December 17, 1966, the Court annulling the public authority's decision for the reasons stated in the judgment ; and referring the matter back to the authority concerned " to enquire afresh into the matter in order to ascertain the exact circumstances in which the applicant

* Vide (1966) 3 C.L.R. 854.

came to retire, and in the light thereof, to decide if the applicant is an entitled officer." The judgment in that recourse, leaves no room for doubt that the legal position of appellant's case was thoroughly considered ; and that it was now for the public authority to find the relevant facts and decide on the matter, in the light of that judgment.

The appellant complains that his application was " deliberately neglected ", so that he found it necessary to file a third recourse for the authority's " omission " to consider his case. According to the statement of the relevant facts, this third recourse was withdrawn on July 1, 1967, upon a statement by counsel for the public authority that the matter would be further reconsidered. About a year later, in May 1968, the appellant still complained to the appropriate public authority that they were failing in their duty to consider and determine his application. Apparently, after this step, the public authority informed the appellant on July 4, 1968, that having given the matter further consideration in the light of the new material placed before them, they still found that he was not an " entitled officer." Their decision is *exhibit* 2 in this recourse, dated June 5, 1968. It is a fully reasoned decision, running into five-and-a-half pages, where in an 18-paragraph-text, the public authority concerned gave their reasons for arriving at their decision. This reasoned decision was communicated to the appellant on July 4, 1968, by *exhibit* 1, on the record before us.

By his present recourse—the fourth in line on the same subject—the appellant seeks the annulment of the decision in question, on four different grounds :

1. That " it was taken contrary to the letter and spirit of the judgment " in recourse No. 37/66.
2. That the appellant " was not called or summoned to appear before respondents in order to support his case by calling any available witnesses ".
3. That the respondent authority " failed to carry out a proper and/or any re-examination of applicant's case."
4. That the " reasons set-forth in the letter of the 4.7.1968 is a stereotyped letter sent to all persons whose applications are rejected by respondent and are mere repetitions of past findings which the Court found erroneous in the past."

Appellant's recourse was opposed on behalf of the Republic, mainly on the ground that the public authority concerned, considered carefully all the material facts in the

light of the judgment in recourse 37/66 and reached the decision—reasonably open to them on the material before them—that the appellant was not an " entitled officer ". The recourse went to trial before one of the Judges of this Court under section 11 (2) of The Administration of Justice (Miscellaneous Provisions) Law, 1964. Counsel on both sides were heard on more than one occasions ; and evidence was called on behalf of the public authority in the form of one of their members stating the circumstances in which appellant's case was examined.

After hearing counsel on the whole matter, the trial Judge gave in a carefully considered judgment, the reasons for which he reached the conclusion that the recourse failed ; and should be dismissed. From that decision, the appellant took the present appeal, on the grounds stated in his notice, which learned counsel on his behalf summed up at the end of his address before us, in five points :

1. That the administrative decision challenged by the recourse runs into the form adopted by the public authority, in a number of cases where they held that the applicant was not an entitled officer ;
2. that the administrative collective organ in question, did not keep minutes of their proceedings ;
3. that certain notes kept by the members of the collective organ, were not placed in the file, but were destroyed ;
4. that the appellant was not afforded an opportunity of being present when two of the " crucial witnesses " gave their evidence to the collective organ ; and
5. that the administrative decision challenged by the recourse, contains " misdirections of law and fact " which go to the root of the matter.

The trial Judge deals with all these points in his decision. The public authority concerned had before them the material upon which the appellant relied for his contention that he was an " entitled officer " under the law. The main ground on which the respondent statutory committee founded their decision is that the appellant was not compelled to retire by pressure exercised upon him either by his superiors or by any other Government agency, so as to qualify for benefits under the statute. The committee took the view that it was his own decision, taken with the object of securing for his own benefit, his pension rights ; and at the same time for getting out of the strain of a policeman's responsibilities at the time. Such a decision was

undoubtedly open to the committee on the material before them ; and there can be no doubt, we think, that Law 48/1961, was not intended to cover public officers who retired on pension in the circumstances which the appellant applied for his retirement.

We do not think that there is any substance in the submission that the decision of the committee should be annulled because it is framed in terms similar to decisions leading to the same result, so long as it was taken after proper examination of the matter and in the proper exercise of the public authority's discretion. There are two points, however, in learned counsel's submission on behalf of the appellant, which we think should be specifically dealt with. Firstly, the non-keeping of minutes ; and secondly the non-filing of the individual notes kept by some of the members of the committee.

As to the first, the legislator enabled the statutory committee formed for the purposes of the statute, to regulate their own proceedings. Their failure to adopt a procedure requiring the keeping of minutes and the fact that no minutes were kept on this particular occasion, regrettable as it may be, cannot, we think, be considered as a reason for annulling the committee's decision, in view of the provisions of section 3 (2). It appears from the evidence of the member of the committee who testified before the trial Judge that the practice of this committee was to keep no minutes other than recording the reasons for their decision. It is his evidence that this was their practice ever since the establishment of the committee, about nine years ago ; and we do not think that there is now good reason or justification for holding that the decisions of this committee are invalid because of their failure to keep minutes.

Mr. Loucaides for the Republic, stated during the hearing of this appeal, that members of the committee consulted the office of the Attorney-General—Mr. Loucaides in particular—on many occasions in the course of the proceedings instituted by the appellant (the four recourses referred to above) but it seems that it never occurred to anybody that the keeping of minutes was highly desirable, if not indispensable. We hope that we shall not be taken as sharing such a view. We think that any public authority dealing with a matter like this, should keep minutes of their proceedings. But deciding the matter on the relevant legislative provisions in this particular statute, regarding the functioning of the committee in question, we do not think that the non-keeping of the minutes, is fatal to their decisions.

As to the non-filing of the individual notes kept by some of the members, here again, we do not think that where minutes are kept by the secretary or other authorised officer of a collective public organ, the notes taken in the course of proceedings by an individual member for the purpose of enabling such member to do his duty in the collective organ, are part of the record of the proceedings of such organ ; unless internal regulations or practice otherwise require. One should not generalise in such matters. In this particular case, we do not think that the individual notes were part of the record of proceedings of the committee.

Where no minutes are kept, such individual notes would be, obviously, very useful to the collective organ to reach their decision ; and to other authorities concerned, to consider the validity of the decision reached, if challenged. But we do not think that, speculating on the contents of any such notes, we should annul the decision taken by the competent statutory organ, when such decision is fully reasoned as the one before us ; a decision which bears the signatures of all the members of the collective organ which has made it. We are deciding this case on its own merits and facts. We do not purport to be laying any principles or rules for proceedings for all collective organs ; and we hope we shall not be taken as doing so.

As to the complaint that the appellant was not afforded an opportunity of being present when two of the " crucial witnesses " gave their evidence before the respondent council, the point was fully dealt with by the learned trial Judge. (See *Georghios HjiLouca* v. *The Republic* (1969) 3 C.L.R. 570 at 574 *et seq.*) We agree with him that it is devoid of merit ; and we need not repeat here what was said in his judgment in this connection.

Another matter that we must touch before leaving this case, is the question of costs. As already pointed out this is the fourth recourse in practically the same matter. In view of our decision regarding costs, suffice it to say that it is not without considerable difficulty that we have adopted the same course as the trial Judge and shall make no order for costs in the appeal.

The appeal fails and is dismissed.

Appeal dismissed. No order for costs in the appeal.