

1974
Mar. 9

[TRIANTAFYLIDIS, P.]

—
CYPRUS POLICE
ASSOCIATION
AND OTHERS
v.
REPUBLIC
(MINISTER OF
INTERIOR
AND/OR
MINISTER
OF FINANCE)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

1. THE CYPRUS POLICE ASSOCIATION,
2. K. KARAOLAS AND OTHERS,

Applicants.

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR AND/OR
THE MINISTER OF FINANCE,

Respondents.

(Case No. 231/71).

Recourse under Article 146 of the Constitution—Legitimate interest required, under Article 146.2—The Cyprus Police Association established under section 52 (1) of the Police Law, Cap. 285—Possesses such interest—They are therefore, entitled to make the present recourse against the sub judice decision whereby the respondents discontinued the payment to applicants 2 to 6 of "good conduct" and "merit" allowances upon their promotion from the rank of sergeant to that of Sub-Inspector.

Recourse under Article 146 of the Constitution—The issue in this case being the legal entitlement to emoluments of public functionaries, it was quite properly brought before this Court by way of a recourse made under Article 146—The sub judice decision (supra) coming within the ambit of the provisions of paragraph 1 of Article 146.

Legitimate interest—Article 146.2 of the Constitution—See supra.

Acts or decisions of organs, authorities exercising executive or administrative functions—Which alone can be challenged by a recourse made under Article 146 of the Constitution (see paragraph 1 of that Article)—Discontinuance of payment to applicants 2 to 6 of the allowances provided by regulation 23 (supra)—See supra.

"Cyprus Police Association"—Entitled to make a recourse under Article 146 of the Constitution directed against the sub judice decision—"Good conduct" and "merit" allowances—Regulation

23 of the Police (General) Regulations, 1958—Solely payable to police officers of the rank of sergeant and constable as long as such officers hold such ranks.

Police (General) Regulations, 1958—"Good conduct" and "merit" allowances—Regulation 23—See immediately hereabove.

This is a recourse under Article 146 of the Constitution directed against the discontinuance of payments of "good conduct" and "merit" allowances when the individual applicants 2 to 6 were promoted from the rank of sergeant in the Police Force to that of Sub-Inspector. The said applicants 2 to 6 were duly receiving the allowances in question under regulation 23 of the Police (General) Regulations, 1958, the full text of which is set out *post* in the judgment of the Court. This recourse was made by the Cyprus Police Association (applicant 1) (established under section 52 (1) of the Police Law, Cap. 285) in a representative capacity on behalf of its members and by the aforesaid five individual police officers (applicants 2 to 6). The preliminary point was taken to the effect that the Cyprus Police Association (applicant 1) was not entitled to make the recourse in that they had no legitimate interest directly and adversely affected by the administrative act complained of, in the sense of paragraph 2 of Article 146 of the Constitution. The Court, distinguishing this case from that of *Demetriou as Chairman of the C.B.C. Staff Society and/or personally and The Republic*, 1 R.S.C.C. 99, rejected the preliminary objection, holding that applicant 1 was properly entitled to challenge the act complained of by means of a recourse under Article 146 of the Constitution. The Court also held that the *sub judice* decision is an act or decision within the provisions of paragraph 1 of the Constitution and that therefore it was quite properly before the Court by way of the present recourse. Eventually, the Court dismissed the instant recourse on the merits of the case, taking the view that the discontinuance of the payments in question was properly decided upon under the provisions of regulation 23 (*supra*) which provides for the payment of the said allowances solely to police officers of the rank of sergeant and constable (see regulation 23 *post* in the judgment).

Article 146, paragraphs 1 and 2, of the Constitution reads as follows:

"1. The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on a recourse made to

1974
Mar. 9
—
CYPRUS POLICE
ASSOCIATION
AND OTHERS
v.
REPUBLIC
(MINISTER OF
INTERIOR
AND/OR
MINISTER
OF FINANCE)

1974

Mar. 9

—
CYPRUS POLICE
ASSOCIATION
AND OTHERS

v.

REPUBLIC
(MINISTER OF
INTERIOR
AND/OR
MINISTER
OF FINANCE)

it on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person.

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”.

Dismissing this recourse the learned President of the Supreme Court:—

Held, I: Regarding the preliminary point to the effect that the Cyprus Police Association (applicant 1) was not entitled to make the recourse:

(1) The purpose for which the applicant 1 was established is as stated in section 52 (1) of the Police Law, Cap. 285 to enable police officers to consider and bring to the notice of the Commander of Police and the Governor (now the Council of Ministers) matters affecting their welfare and efficiency, including pay, pensions and conditions of service.

(2) It is to be noted that under section 51 (1) (a) of Cap. 285 (*supra*), members of the Police Force are not allowed to become members of a trade union; therefore, applicant 1 is, in effect, a trade union—for the aforesaid purposes—of police officers other than gazetted police officers.

(3) (a) It is true that sub-section (2) of the said section 52 (*supra*) prevents the applicant Association from acting “in relation to any question of discipline, promotion, transfer, leave or any other matter affecting individuals”; but as I read this provision it appears to me that it prevents applicant 1 (the said Association) from taking action in relation to matters affecting only individuals *personally* without affecting in general the interests of its members *as a whole*; and the matter in issue in these proceedings does not affect only individuals but it does affect the interests of the members of applicant 1 *as a whole*.

(b) The present case is distinguishable from that of *Demetriou as Chairman of the Cyprus Broadcasting Corporation Staff*

Society etc., and *The Republic*, 1 R.S.C.C. 99, in which it was held (at p. 104) that no legitimate interest of a trade union, which had “ a consultative voice prior to the effecting of an appointment”, had been directly or adversely affected at the stage when an advertisement of a vacancy in a post was published but no appointment thereto had yet been made.

(4) In the light of the above, I am inclined to the view that the Cyprus Police Association (applicant 1) was entitled to make the present recourse (see, *inter alia*, Conclusions from the Case-Law of the Greek Council of State 1929-1959,—Πορίσματα Νομολογίας του Συμβουλίου Ἐπικρατείας 1929-1959—p. 262 and in particular the decision No. 498/1934).

Held, II: Regarding the other preliminary point i.e. whether a recourse under Article 146 of the Constitution lies at all against the sub judice decision:

As the issue to be decided is the legal entitlement to emoluments of public functionaries, it was quite properly brought before this Court by way of recourse made under Article 146 of the Constitution (see, *inter alia*, Kyriacopoulos on Greek Administrative Law, 4th edn., Vol. C, p. 263, and the decisions of the Greek Council of State Nos. 782/1932 and 512/1936).

Held, III: Regarding the merits of the case:

(1) Construing regulation 23 of the Police (General) Regulations, 1958, as a whole (see full text of this regulation *post* in the judgment), I find myself unable to agree with counsel's submission that the said allowances (“ good conduct” and “ merit” allowances) could not be discontinued after the promotions of the individual applicants.

(2) In my view it is perfectly clear that regulation 23 only provides for the payment of the allowances concerned solely to police officers of the rank of sergeants and constable. These allowances are obviously intended to be incentives for the lower ranks of the police; and they are neither needed nor appropriate, because of their nature, for higher ranks.

Recourse dismissed.

Cases referred to:

Demetriou as Chairman of the Cyprus Broadcasting Corporation Staff Society and/or personally and The Republic, 1 R.S.C.C. 99;

1974
Mar. 9
—
CYPRUS POLICE
ASSOCIATION
AND OTHERS
v.
REPUBLIC
(MINISTER OF
INTERIOR
AND/OR
MINISTER
OF FINANCE)

1974
Mar. 9

Decisions of the Greek Council of State: Nos. 782/1932, 498/1934 and 512/1936.

—
CYPRUS POLICE
ASSOCIATION
AND OTHERS
v.
REPUBLIC
(MINISTER OF
INTERIOR
AND/OR
MINISTER
OF FINANCE)

Recourse.

Recourse against the decision of the respondents to discontinue the payment of “good conduct” and “merit” allowances to applicant No. 2 and five other applicants when they were promoted from sergeants to Sub-Inspectors, in the Police in April 1971.

L. Papaphilippou, for the applicants.

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

Cur. adv. vult.

The following judgment was delivered by:-

TRIANTAFYLIDIS, P.: The applicants in this recourse complain against the discontinuance of payments of “good conduct” and “merit” allowances, when applicant 2 and five other individual applicants were promoted from sergeants to Sub-Inspectors, in the police, in April 1971.

As the issue to be decided was the legal entitlement, to emoluments, of public functionaries, it was quite properly brought before this Court by way of recourse made under Article 146 of the Constitution (see, *inter alia*, Kyriacopoulos on Greek Administrative Law—Κυριακοπούλου ‘Ελληνικὸν Διοικητικὸν Δίκαιον—4th ed., vol. C, 263, and the decisions of the Greek Council of State—Συμβούλιον Ἐπικρατείας—Nos.782/1932 and 512/1936).

Applicant 1 is the Cyprus Police Association, established under section 52 (1) of the Police Law, Cap. 285, and is making this recourse in a representative capacity on behalf of its members; to the Association belong all police officers, except the Gazetted police officers who belong to the Cyprus Senior Police Officers Association.

It is proper, I think, to deal at this stage with the objection that this recourse could not be made by applicant 1:

The purpose of the establishment of applicant 1 is, as stated in section 52 (1), above—(which should be read modified by virtue of Article 188 of the Constitution)—to enable police officers to consider and bring to the notice of the Commander

of Police and the Council of Ministers matters affecting their welfare and efficiency, including pay, pensions and conditions of service.

It is to be noted that under section 51 (1)(a) of Cap. 285, members of the Police Force are not allowed to be members of a trade union; therefore, applicant 1 is, in effect, a trade union—for the aforesaid purposes—of police officers other than Gazetted police officers.

I do not agree with the view that sub-section (2), of section 52 of Cap. 285 can be construed as a provision excluding the making of a recourse by applicant 1; it is true that this sub-section prevents applicant 1 from acting “in relation to any question of discipline, promotion, transfer, leave or any other matter affecting individuals”, but as I read this provision it appears to me that it prevents applicant 1 from taking action in relation to matters affecting only individuals personally without affecting in general the interests of its members as a whole; and the matter in issue in these proceedings does not affect only individuals but it does affect the interests of the members of applicant 1 as a whole.

The present case is distinguishable from that of *Demetriou as Chairman of the C.B.C. Staff Society and/or personally and The Republic*, 1 R.S.C.C. 99, in which it was found (at p. 104) that no existing legitimate interest of a trade union, which had “a consultative voice prior to the effecting of an appointment”, had been directly or adversely affected at the stage when an advertisement of a vacancy in a post was published but no appointment thereto had yet been made.

In the light of the above, I am inclined to the view that applicant 1 was entitled to make the present recourse (see, *inter alia*, Conclusions from the Case—Law of the Greek Council of State—Πορίσματα Νομολογίας του Συμβουλίου της Ἐπικρατείας 19291/959, p. 262, and in particular its decision No. 498/1934).

Applicants 2 to 6 were receiving the allowances in question under regulation 23 of the Police (General) Regulation, 1958; this regulation reads as follows (and expressions therein such as “Governor” and “Chief Constable” should now be taken as having been substituted by the appropriate corresponding terms, by virtue of Article 188 of the Constitution):—

“23.(1) An allowance for good conduct shall be paid to police officers of the rank of sergeant and constable, at

1974
Mar. 9

—
CYPRUS POLICE
ASSOCIATION
AND OTHERS
v.
REPUBLIC
(MINISTER OF
INTERIOR
AND/OR
MINISTER
OF FINANCE)

1974
Mar. 9

CYPRUS POLICE
ASSOCIATION
AND OTHERS
v.
REPUBLIC
(MINISTER OF
INTERIOR
AND/OR
MINISTER
OF FINANCE)

such rate as may be fixed by the Council of Ministers, on each of the following occasions:-

“After 2 years’ uninterrupted good conduct;

After a further 2 years’ uninterrupted good conduct;

After a further 2 years’ uninterrupted good conduct;

After a further 2 years’ uninterrupted good conduct:

Provided that any such allowance or allowances may be granted by the Commander of Police at his discretion to sergeants and constables for special or meritorious service and irrespective of their length of service.

(2) In this regulation ‘uninterrupted good conduct’ means that no greater punishment than a reprimand has been awarded. When a greater punishment has been awarded, the period of uninterrupted good conduct shall be deemed to be broken and to start again on the day following that on which the offence was committed. Where a sergeant or constable –

(a) is punished twice within six months with a punishment which is entered in his personal record the last earned allowance shall, unless the Commander of Police otherwise directs, be withdrawn;

(b) is fined more than 2 days’ pay or receives a greater punishment or is sentenced by a Court the last two allowances earned shall, unless the Commander of Police otherwise directs, be withdrawn.

(3) (a) Allowances for good conduct which have been withdrawn shall be regained after one year of uninterrupted good conduct.

(b) Allowances for special or meritorious service which have been forfeited shall not be regainable.

(4) A merit allowance, the amount of which shall be fixed by the Council of Ministers, shall be awarded to all sergeants and constables who are in receipt of the four ‘good conduct allowances and have completed 15 years’ service”.

1974
Mar. 9

—
CYPRUS POLICE
ASSOCIATION
AND OTHERS
v.
REPUBLIC
(MINISTER OF
INTERIOR
AND/OR
MINISTER
OF FINANCE)

At the time of their promotion to Sub-Inspectors the applicants 2 to 7 were each receiving four good conduct allowances totalling C£14,400 per annum and applicants 2, 3, 5, 6 and 7 were receiving, also, a merit allowance of C£12 per annum. It does not appear to be in dispute that on promotion each one of them was emplaced, in the salary scale of his new rank, in such a manner that his total yearly emoluments would not be less than his total yearly emoluments prior to his promotion, including the aforementioned allowances.

It has been submitted by learned counsel for the applicants that the payment of the said two allowances could not be discontinued after the promotions of the applicants.

I find myself unable, after having construed regulation 23 as a whole, to agree with this submission. In my view it is perfectly clear that regulation 23 only provides for the payment of the allowances concerned to, solely, police officers of the ranks of sergeant and constable, so long as such officers hold such ranks; if they were receivable by sergeants and constables after their promotions to higher rank this would result in even the Commander of Police continuing to receive them (once he had become entitled to them when he was a constable or a sergeant) and in such a case an absurd consequence would follow, namely that *he* would have to apply the provisions of paragraphs (1) and (2) of the regulation to *himself*.

These allowances are, in my opinion, intended to be incentives for the lower ranks of the police, which are referred to expressly in regulation 23, and they are neither needed nor appropriate, because of their very nature, for higher ranks.

It has been argued that they cannot be discontinued, after promotion to a higher rank, because they are pensionable. I do not think that this is a valid argument: The allowances in question are, indeed, pensionable but this does not necessarily mean that they should continue to form part of the emoluments of a police officer even after he attains a rank above that of a sergeant or a constable; they are pensionable only in the sense that they are taken into account, for the computation of pension, if a sergeant or police constable retires from the police while still holding such rank.

For all the foregoing reasons I have reached the conclusion that this recourse fails and should be dismissed.

Application dismissed.