

1981 November 20

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS HJIGEORGHIOU,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF INTERIOR,

*Respondent.*

(Case No. 251/79).

5 *Natural Justice—Principles of—Promotions in the Fire Service—  
Applicant recommended for promotion but not promoted because  
of doubts regarding his loyalty to the State—Grounds upon which  
said doubts were based not brought to his notice and not given  
an opportunity to be heard in relation thereto—Course adopted  
contrary to and offending against well established principles  
of natural justice—Sub judice decision annulled.*

10 Applicant, a Sergeant in the Fire Service, was a candidate  
for promotion to the rank of Inspector; and though he was  
strongly recommended for promotion by the appropriate Promo-  
tion Board the respondent Minister of Interior did not approve  
his promotion because there were doubts regarding his loyalty  
15 to the State. It was common ground that neither the grounds  
upon which the Minister's doubts regarding applicant's loyalty  
were based nor the existence of such doubts were either brought  
to the notice of the applicant or that he was not given an oppor-  
tunity to be heard in relation thereto.

*Upon a recourse by the applicant:*

20 *Held*, that since applicant was never given an opportunity  
to be heard on the matter, respondent acted contrary to and  
against well established principles of natural justice; accordingly  
this Court is bound to annul the *sub judice* decision.

*Sub judice decision annulled.*

Cases referred to:

25 *Tsangarides and Others v. The Republic* (1981) 3 C.L.R. 117;  
*Koudounas v. The Republic* (1981) 3 C.L.R. 54.

**Recourse.**

Recourse against the decision of the respondent not to fill two vacant posts of Police Inspector in the Fire Service.

*L. N. Clerides*, for the applicant.

*R. Gavrielides*, Senior Counsel of the Republic, for the respondent. 5

*Cur. adv. vult.*

L. LOIZOU J. read the following judgment. By the present recourse the applicant prays for the following relief:

(1) A declaration of the Court that the decision of the Chief of the Police taken with the approval of the Minister of the Interior to promote P.S. Cleanthis Papavassiliou of Nicosia to the post of Inspector Fire Service in preference and instead of the applicant as from the 1st May, 1979, should be declared null and void and of no effect whatsoever. And 10 15

(2) A declaration that the act and/or decision of the Chief of Police and/or the Minister of the Interior taken on the 7th May, 1979, not to fill the two vacant posts of Police Inspector in the fire Service although applicant had been recommended for promotion to such post should be declared null and void and of no legal effect whatsoever. 20

In the course of the hearing learned counsel for the applicant abandoned remedy (1) and relied only on remedy (2). He also based his case and limited his argument to only one ground of law that the *sub-judice* decision was based on extraneous reasons i.e. on adverse reports made by the Central Information Service. 25

The undisputed facts of the case in so far as relevant are briefly as follows:

The applicant is a Sergeant in the Fire Service. He had passed his examinations for promotion to the rank of Inspector. In January, 1979, there were vacant posts of Inspector in the Fire Service and the Chief of Police set up a Promotion Board under regulation 4 of the Police (Promotion) Regulations which met on the 22nd February, 1979, and considered all candidates recommended by the Chief Fire Service Officer for the 30 35

posts in question. The Board strongly recommended the applicant and the interested party. The Chief of Police recommended to the Minister to approve the promotion of the persons selected including the applicant. The Minister of the Interior acting under s. 13(2) of the Police Law, Cap. 285 (as amended by Law 29/66) by letter dated the 5th May, 1979, (*exhibit 1*) informed the Chief of Police that he did not approve applicant's promotion because there were doubts regarding his loyalty to the State. As a result the applicant was not promoted and the present recourse was filed.

It is common ground that neither the grounds upon which the Minister's doubts regarding applicant's loyalty were based nor the existence of such doubts were either brought to the notice of the applicant or that he was given an opportunity to be heard in relation thereto. Learned counsel appearing for the respondents was not, himself, aware what gave rise to the Minister's doubts but he thought that it may have been certain rumours regarding applicant's conduct at the time of the coup. As a matter of fact this seems to be quite likely because it appears from a letter dated 20th July, 1978 (*exhibit 2*) addressed by the Chief Fire Service Officer to the applicant that there were certain reports against him made under The Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Law, 1977, which were investigated and the Attorney-General of the Republic had advised that no charge could be brought against him.

This being the position it seems to me that it is of no consequence whether the Minister's doubts which led to the *sub-judice* decision were based on the reports to which *exhibit 2* relates or on any other reports or information from undisclosed sources as either alternative is equally fatal to such decision because either it was based on grounds which did not constitute an offence of any kind and which could not legitimately be taken into account (*see, inter alia, Tsangarides and Others v. The Republic* (1981) 3 C.L.R. 117 and *Koudounas v. The Republic* (1981) 3 C.L.R. 54) or on mere suspicions but, in either case, the applicant was never given an opportunity to be heard on the matter.

This is contrary to and offends against well established principles of natural justice and this Court is bound to annul the

*sub judice* decision accordingly. With regard to costs I consider it fair that, in all the circumstances, the applicant should be paid £25 against his costs.

*Sub judice decision annulled.*

*Order for costs as above.*

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