

1984 April 30

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

THEOPHRASTOS NICOLAOU,

Applicant,

v.

1. THE PUBLIC SERVICE COMMISSION
2. THE MINISTER OF AGRICULTURE AND NATURAL RESOURCES,

Respondents,

(Case No. 86/82).

CHARALAMBOS ANTONIADES,

Applicant,

v.

1. THE PUBLIC SERVICE COMMISSION,
2. THE MINISTER OF AGRICULTURE AND NATURAL RESOURCES,

Respondents.

(Case No. 87/82).

Legitimate Interest—Article 146.2 of the Constitution—Recourse against omission to emplace applicants to post of Animal Husbandry Officer—Applicants not entitled under the provisions of the relevant laws to be emplaced to the said post—And persons who were so emplaced not holding the same post as the applicants so that a question of different treatment might arise—Applicants do not possess any legitimate interest to pursue the recourse.

5

Administrative Law—Omission—Recourse against omission to emplace applicants to post of Animal Husbandry Officer—No provision in the relevant laws entitling respondents to emplace applicants to the said post—No omission on the part of the re-

10

spondents to do anything which they were legally bound or entitled to do.

5 *Public Officers—Salary Scales and Posts—Emplacement to—Legitimate interest to file a recourse against omission to be emplaced to a certain post.*

10 With the enactment, on 22.4.1981, of the Public Officers (Conversion of Salaries and Arrangement of Other Matters) Law of 1981 (Law 22/81), in combination with the Supplementary Budget Law (No. 3) of 1981 (Law No. 20/81) and the Special
15 Supplementary Appropriation (Development Fund) Law of 1981 (Law 21/81) the post of Assistant Animal Husbandry Officer (Scale A.8), was substituted with the post of Animal Husbandry Officer (Scales A.8 and A.10), as from 1.1.1981; and the holders of the post of Assistant Animal Husbandry
20 Officer were emplaced, on the basis of the above Laws, to the post of Animal Husbandry Officer, having been notified in writing about the change in the title of their post. By means of these recourses the applicants, who were holding the post of Animal Husbandry Superintendent 1st Grade challenged the omission of the respondents to emplace them to the post of Animal Husbandry Officer, scale 8-10 as from 30.12.1981.

25 *Held*, (1) that no provision is made in the above Laws about the emplacement of holders of the post of Animal Husbandry Superintendent 1st Grade to the scales applicable to the post of Animal Husbandry Officer; that the respondents had to apply the law as it was and they had no right under the law or a duty
30 cast upon them to emplace the applicants on the scale of any other post; and that, consequently, there is no omission on the part of the respondents to do anything which they were legally bound or entitled to do.

35 (2) That the applicants do not possess any legitimate interest to pursue these recourses because they were not entitled, under the provisions of the relevant Laws to be emplaced to the post of Animal Husbandry Officer or Assistant Animal Husbandry Officer and because the persons mentioned in the recourses were not holding the same post as that of the applicants so that a different treatment or emplacement of persons holding the same post might have vested the applicants with a legitimate interest

to challenge such emplacement; accordingly the recourse should fail.

Application dismissed.

Cases referred to:

- Police Association v. Republic* (1972) 3 C.L.R. 1; 5
- Cyprus Flour Mills v. Republic* (1968) 3 C.L.R. 12;
- Economides v. Republic* (1983) 3 C.L.R.^s 506;
- Leontiou v. Republic* (1983) 3 C.L.R. 221 at p. 229.

Recourses.

Recourses against the refusal of the respondents to emplace applicants to the post of Assistant Animal Husbandry Officer, scale A8-A10. 10

L. N. Clerides, for the applicants.

S. Matsas, for the respondents.

Cur. adv. vult. 15

SAVVIDES J. read the following judgment. By these recourses which were heard together as presenting common questions of law and fact, the applicants pray for a declaration of the Court that -

- “(1) The omission of the respondents or any of them to emplace the applicants to the post of Assistant Animal Husbandry Officer, scale 8 - 10, as from 30.12.81 should not have been made and that the applicants should have been emplaced to the above post and scale. 20
- (2) The act and/or decision of the respondents to emplace the applicants to the post of Assistant Officer (scale 8 - 10) as from 30.12.81, is void and of no legal effect whatsoever.” 25

The facts, which are common in both cases, are as follows:

Applicant in Case No. 86/82 was first appointed in the Ministry of Agriculture in 1955 and since 1973 he holds the post of Animal Husbandry Superintendent 1st Grade. Applicant in Case No. 87/82 was first appointed in 1954 and he also holds since 1973 the post of Animal Husbandry Superintendent 1st Grade. Both applicants have been promoted to the above post, which they hold till today, from the immediately lower post of Animal Husbandry Superintendent 2nd Grade. 35

With the enactment, on 22.4.81, of the Public Officers (Conversion of Salaries and Arrangement of Other Matters) Law of 1981 (Law 22/81), in combination with the Supplementary Budget Law (No. 3) of 1981 (Law No. 20/81) and the Special
 5 Supplementiary Appropriation (Development Fund) Law of 1981 (Law 21/81) the post of Assistant Animal Husbandry Officer (scale A8), was substituted with the post of Animal Husbandry Officer (scales A.8 and A.10), as from 1.1.81 and the
 10 holders of the post of Assistant Animal Husbandry Officer were emplaced, on the basis of the above Laws, to the post of Animal Husbandry Officer, having been notified in writing about the change in the title of their post. By the same Laws, the scale 2 of the post of Animal Husbandry Superintendent 1st Grade (which was scale A8) was changed to scales A8 and A9.

15 The applicants who were at all material times holding the post of Animal Husbandry Superintendent 1st Grade, filed, on the 18th February, 1982, the present recourses, which are based on the following grounds of law:

- 20 "1. That the act and/or omission of the respondents is contrary to the provisions of Law 20/81.
2. The respondents or either of them acted under circumstances amounting to discriminatory treatment in contravention of Article 28 of the Constitution.
- 25 3. On the basis of the Schemes of Service and their qualifications, the applicants should have been emplaced to the post of Assistant Animal Husbandry Officer."

The application was opposed and counsel for the respondents based his opposition on the following grounds of law:-

- 30 1. The sub judice decision was properly and lawfully taken after all relevant facts and circumstances of the case were taken into consideration.
2. The respondents did not in any way omit to do anything with regard to the applicants, which they were required to do under any law.
- 35 3. The sub judice act and/or omission was taken and/or made reasonably.
4. The applicants lack legitimate interest in the sense of

Article 146 of the Constitution for challenging any act and/or omission of the respondents.

5. The present recourses are out of time.
6. The applicants at all material times did not possess the required qualifications and/or hold the relevant post in order to be entitled to a change of their title. 5

Before proceeding to examine the issues raised in these recourses, I wish to observe that the prayer in both recourses as set out therein is so vague and confusing that I had to go through the Budgetary provisions for several years and the provisions in the respective laws to find out the nature of the various posts and whether some of them do exist. . By the first part of the prayer in both cases the applicants complain about the omission of the respondents to emplace them to the post of "Assistant Husbandry Officer". Such post is a non-existent post since it has been substituted as from 1.1.81 with the post of Animal Husbandry Officer. I presume what applicants meant to say is the post of Animal Husbandry Officer. In the second part of the prayer, applicants complain about their emplacement to the post of "Assistant Officer (Βοηθοῦ Λειτουργοῦ) I could trace no such post in the structure of the Ministry of Agriculture and Natural Resources and no such post exists or existed in the Budgets for several years both prior and after 1981. I regret to observe that it is not clearly stated what the applicants really challenge by this part of their prayer since there is no evidence or any material before me showing that the applicants were emplaced, within the time material for the filing of these recourses in any particular post. The only post under the heading of Animal Husbandry which is on scales A8 and A10 is that of Animal Husbandry Officer to which, as I have presumed in dealing with the first part of the prayer, the applicants were not emplaced and having been aggrieved they filed the present recourse. 10 15 20 25 30

Subject to the above, I come now to consider the issues before me. The first issue that falls for consideration is whether there is any omission on the part of the respondents to do anything which they ought to have done and which could be the subject matter of a recourse (see Stassinopoulos on the Law of Administrative Disputes (1964) 4th Ed. p. 195, and the cases of *Police* 35

Association v. The Republic (1972) 3 C.L.R. 1: *Cyprus Flour Mills v. The Republic* (1968) 3 C.L.R. 12).

5 In resolving this issue, I have to consider whether any duty was cast on the respondents under Laws 20/81, 21/81 or 22/81 to
emplace the applicants to the post of Animal Husbandry Officer. The above laws provide that the title of the post of Assistant
Animal Husbandry Officer (which was a first entry post on scale
A8) should be substituted by the title of Animal Husbandry
10 Officer (scales A8 and A10, also a first entry post). By section 3(a) and Schedule A of Law 22/81, provision is made for those holding the post of Assistant Animal Husbandry Officer on the date of the publication of the Law, to be placed, as from 1.1.81, to the post of Animal Husbandry Officer on personal Salaries on scales A8, A10 and A11. No provision is made in the said laws
15 about the emplacement of holders of the post of Animal Husbandry Superintendent 1st Grade to the scales applicable to the post of Animal Husbandry Officer. The respondents had to apply the law as it was and they had no right under the law or a duty cast upon them to emplace the applicants on the scale of any
20 other post. Consequently, there is no omission on the part of the respondents to do anything which they were legally bound or entitled to do. If the applicants feel that provision should also have been made in the law for the upgrading of their post, this is a matter outside the ambit of this recourse.

25 I wish further to add that with regard to the persons mentioned in these recourses as interested parties, they were not emplaced to the post of Animal Husbandry Officer under the provisions of the above laws but in fact they were holding the post of Animal Husbandry Officer 2nd Grade (which before 1981 was on scale
30 A9 and was a first entry and promotion post) having been promoted to such post on various dates between 1962 and 1978. In accordance with a note in the relevant schemes of service in force prior to 1981, when the new schemes of service were made, holders of the post of Animal Husbandry Superintendent 1st
35 Grade possessing certain qualifications specified therein were eligible for promotion to the post of Animal Husbandry Officer 2nd Grade; subject to the condition that persons so promoted would not be deemed as possessing the necessary qualifications required by the schemes of service for promotion to the immediately higher post of Animal Husbandry Officer, 1st Grade.
40

The applicants did not, within the appropriate time, challenge the promotions of the above persons and as counsel for them conceded in his written address they did not challenge them since the persons so promoted were senior to them. In any case, as already explained, the above persons did not change post or title by virtue of the 1981 Laws mentioned above. 5

In view of the situation as explained above, I find that the applicants do not possess any legitimate interest to pursue these recourses for the following reasons:

- (a) They were not entitled, under the provisions of the relevant Laws to be emplaced to the post of Animal Husbandry Officer or Assistant Animal Husbandry Officer, the latter of which, as I have already explained, ceased to exist since 1981. 10
- (b) The persons mentioned in the recourses were not holding the same post as that of the applicants so that a different treatment or emplacement of persons holding the same post might have vested the applicants with a legitimate interest to challenge such emplacement. 15

The claims of the applicants amount, in fact, to a claim for appointment or promotion to another post and as such it has no foundation as there is no vested right to promotion. (See *Economides v. Republic* (1972) 3 C.L.R. 506; *Leontiou v. Republic* (1983) 3 C.L.R. 221, 229). 20

If applicants consider that they have the qualifications required by the schemes of service for the post of Animal Husbandry Officer, they may apply for appointment or promotion to it, whenever a vacancy to such a post is published and any legal remedy will be open to them if they feel that they are aggrieved. 25 30

As I have already explained, in the present cases no such remedy exists as they are not vested with a legitimate interest.

With regard to the second part of the prayer of the recourses, here is no evidence of any kind before me tending to show that an administrative act or decision of any kind concerning the applicants' status or post has taken place, which can be challenged by the recourses. I, therefore, find that there is no substance 35

in such part of the recourses and, consequently, it has to be dismissed.

In the result, both the above recourses fail and are hereby dismissed.

- 5 As to costs, bearing in mind that an order has already been made against the respondents to pay £15.- costs in view of the default of counsel on their part to appear at the stage of directions, I have decided not to disturb such order, but on the other hand, to allow £15.- costs in favour of respondents.

10 *Recourses dismissed. Order for costs as above.*