

1985 June 11

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

KYPROS GREGORIOU AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR AND/OR
THE COMMANDER OF POLICE,

Respondent.

(Cases Nos. 132/80, 144/80, 135/80,
136/80, 139/80, 155/80).

Police Force—Promotions—Rank of Superintendent B'—Appropriate organ to make promotions is the Minister of Interior and not the Chief of Police—Section 13(1) of the Police Law, Cap. 285—Promotions made by the Minister
5 —Use of the word "approval" in the relevant decision a wrong expression with no legal significance—Above rank being a high office in the Police hierarchy appointing authority vested with wide discretionary powers—Applicants failed to establish striking superiority—Sub judice decision
10 reasonably open to the respondent Minister.

Natural Justice—Police Force—Promotions—Central Information Service reports on the loyalty and devotion to duty of applicants taken into consideration—Such reports not attributing any criminal or disciplinary offence to them—
15 Therefore rules of natural justice not violated.

Legitimate interest—Absence of—May be examined by the Court *ex proprio motu*—Police Force—Promotions—Applicant must have retired from the service when the sub judice decision was taken—No legitimate interest to file
20 a recourse against his non-promotion.

The applicants and the interested parties were candidates for promotion to the rank of Superintendent B' in the Police Force. The Chief of Police after taking into consideration the recommendations of a Selection Board and a selection Committee recommended to the Minister of Interior the promotion of the interested parties; and the Minister after taking into account the legal opinion of the Deputy Attorney-General regarding the question of loyalty, dedication to duty and personal reputation gave his approval for the promotion of the interested parties and sent to each one, through the Chief of Police, a personal appointment to the above rank.

Upon a recourse by the applicants it was mainly contended that the promotions were wrongly effected by the Chief of Police, on the approval of the Minister of Interior because under section 13(1) of the Police Law, Cap. 285 they should have been effected by the Minister himself and not by the Chief of Police. It was, further, contended on behalf of three of the applicants that, in considering their suitability for promotion, the respondent took into account adverse reports* from the Central Information Service, KYP, concerning their loyalty and devotion to duty, in view of which they were considered as not eligible for promotion; and it was argued that since such reports were adverse, they should not have been considered at all, but in any event, since they were so, they should not have been accepted on their face value without first having been looked into and without informing the applicants and giving them the right to be heard in relation thereto, in accordance with the rules of natural justice.

Held, (1) that the appropriate organ to make the promotions in question was the Minister of Interior and not the Chief of Police; that from the material before this Court it is clear that the said promotions were made by the Minister and that the use of the words "approval" was only a wrong expression with no legal significance.

(2) That it is obvious that the contents of the reports of the central information service, KYP, do not attribute any

* The reports are quoted at pp. 1318-1319 post

5 criminal or disciplinary offence as such as having been committed by any of the three officers to have been considered as taken into consideration in violation of the rules of Natural Justice and therefore rendering the sub justice decision as invalid on account of wrong procedure.

10 (3) That examining the sub justice decisions in the light of the material before this Court and the principle enunciated in the case of *Frangos v. The Republic* (1970) 3 C.L.R. 312, that in selecting the most suitable candidate for appointment to high office in the administrative structure the appointing authority is vested with wide discretionary powers and no doubt the post of Superintendent B' in the police hierarchy is a high office, this Court has come to the conclusion that the applicants have failed to establish striking superiority and that the sub justice decision was reasonably open to be taken by the respondent Minister in the circumstances; accordingly the recourses must fail.

20 *Held, further,* that as applicant Zavros, in view of his age must have had retired from the service when the sub justice decision was taken and was not eligible for promotion his recourse must be dismissed for this reasons too; and that though the respondents have not in the opposition raised the ground of absence of legitimate interest of this applicant the Court felt duty bound to examine this aspect of the case ex proprio motu.

25 *Applications dismissed.*

Cases referred to:

- 30 *Tsangarides and Others v. Republic* (1981) 3 C.L.R. 117;
Ierides and Another v. Republic (1983) 3 C.L.R. 1028;
Haviaras v. Republic (1981) 3 C.L.R. 415;
HadjiGeorghiou v. Republic (1981) 3 C.L.R. 587;
Iacovides v. Republic (1981) 3 C.L.R. 305;
Koudounas v. Republic (1981) 3 C.L.R. 46;

Michael and Others v. Republic (1984) 3 C.L.R. 1358;

Frangos v. Republic (1970) 3 C.L.R. 312.

Recourses.

Recourses against the decision of the respondents to promote the interested parties to the post of Superintendent "B" in the Police Force in preference and instead of the applicants. 5

E. Efsthathiou with *C. Loizou*, for the applicants.

Cl. Antoniadis, Senior Counsel of the Republic, for the respondents. 10

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recourses, which have been heard together in view of their nature, the applicants challenge, as being null and void and of no effect whatsoever, the promotions to the post of Superintendent "B" in the Police Force, of thirteen interested parties, namely; 1. C. Kleanthous, 2. Chr. Djiapouras, 3. A. Petrides, 4. D. Nicola, 5. A. Haviaras, 6. N. Christodoulou, 7. A. Trifyllis, 8. I. Adradjotis, 9. P. Leonida, 10. A. Artymatas, 11. A. Moustakas, 12. Chr. Economides, and 13. N. Sophocleous. 15 20

This post is a promotion post from the rank of Chief Inspector. In accordance with reg. 4 of the Police (Promotion) Regulations, 1958, a Selection Board was set up by the Chief of Police for the consideration and evaluation of candidates for promotion to the posts of Sergeant, Inspector, Chief Inspector and Superintendent "B". 25

A Selection Committee was also set up by the Chief of Police in April, 1979, in accordance with the Police Orders, dated 12th March, 1979, Part XX No. 11 (Appendix "D" to the Opposition), for the same purpose and in order to assist in the process of promotions. The evaluations of the Committee were placed before the Selection Board, the recommendations of which are to be found in tabulated form in exhibit 20. 30 35

The five applicants were:

- 5 (1) Kypros Gregoriou, Applicant in Recourse No. 132/80: He enlisted in the Police Force on 9th May, 1942, and was promoted to Sergeant on 1st August, 1955, to Sub-Inspector on 1st June, 1958, Inspector on 1st July, 1965, and to Chief Inspector on 1st September, 1972. He was "strongly recommended" by his Divisional Commander for promotion to the post in question and was placed 8th in order of merit by the Selection Board.
- 10 (2) Petros Stylianides, Applicant in Recourse No. 135/80: He enlisted on the 1st September, 1941. He was promoted to Sergeant on the 1st August, 1955, to Sub-Inspector on the 16th August, 1960, Inspector on 1st January, 1961, and to Chief Inspector on 1st April, 1971. He was "strongly recommended" by his Divisional Commander for promotion to the post of Superintendent "B". He was placed 16th in order of merit by the Selection Board.
- 15 (3) Georghios Kouis, Applicant in Recourse No. 136/80: He enlisted on the 22nd October, 1959. He was promoted to Sergeant on the 1st October, 1964, to Sub-Inspector on 1st April, 1971, Inspector on 5th July, 1974, and to Chief Inspector on 10th January, 1977. He was "strongly recommended" by his Divisional Commander for promotion. He was placed by the Selection Board, 30th in order of merit.
- 20 (4) Antonis Kyriakides, Applicant in Recourse No. 139/80: He enlisted in the force on the 1st July, 1948. He was promoted to Sergeant on 12.7.1956, Sub-Inspector on 1.3.1967, Inspector on 1.4.1971 and Chief Inspector on 10.1.1977. He was "strongly recommended" by his Divisional Commander. He was placed by the Selection Board 31st in order of merit.
- 25 (5) Costas Zavros, Applicant in Recourse No. 144/80: He was born on the 17.1.1920. He enlisted in the Service on the 25.9.1939. He was promoted to Sergeant on 1.7.1955, to Sub-Inspector on 1.6.1958, Inspector on 1.4.1971 and to Chief Inspector on 10.1.1977. He was "recommended" by his Divisional Commander. He was placed by the Selection Board as 45th in order of merit.
- 30
- 35
- 40

All applicants appeared before the Selection Board, the views and recommendations of which, which were of an advisory nature, were placed before the Chief of Police. Taking these into consideration he selected the interested parties for promotion and recommended to the Minister to give his approval for such promotions. The relevant letter of the Chief of Police dated 16.1.1980 to the Minister (Appendix "E" to the Opposition) reads as follows:-

"It is submitted hereinbelow a list of names of Chief Inspectors, with brief biographical/service information, of whom the promotion to the next rank of Superintendent "B" is recommended. All these are properly qualified and are considered by me from all other (officers) of equal rank as the best ones for promotion, on the basis of my personal judgment and the conclusions which I have reached after diligent consideration of the contents of their personal files, the recommendations of the Selection Committees and the Selection Board and after having taken into consideration the views and recommendations of the Divisional Commanders of the Officers concerned and the Director of KYP in relation to the character, personal reputation and loyalty of each one of them:

1. Chrysanthos Economides...
2. Costas Kleanthous... 25
3. Christos Tjapouras...
4. Yiannis Adrajiotis...
5. Andreas Artymatas...
6. Antonis Petrides...
7. Demetris Nicola... 30
8. Andreas Haviaras...
9. Neophytos Sofocleous...
11. Andreas Trifyllis...
12. Andreas Moustaka..."

The Minister of Interior took into account the legal opinion of the Deputy Attorney-General (Appendix F to the Opposition) dated 7.1.80 as regards the question of loyalty, dedication to duty and personal reputation and gave his approval for the promotion of the interested parties and sent to each one through the Chief of Police, a personal appointment to the rank of Superintendent "B".

The promotions of the interested parties were published in the Police Orders of the 10.3.1980, Part "H", No. 10/80 (Appendix "Z" to the Opposition), promoting the afore-said thirteen interested parties as from 1.3.1980.

Hence the present recourses.

These recourses are based on the following grounds of Law:

- (1) The sub judge decision was taken in breach of the Police Regulations and/or the Law governing the promotions of Police Officers.
- (2) The sub judge decision was taken in excess and/or in abuse of powers.
- (3) The sub judge decision was taken in breach of the rules of proper administration.
- (4) The respondents failed to consider the qualifications, experience, merit and seniority of the applicants vis-a-vis the interested parties.
- (5) The sub judge decision is contrary to the rules of natural justice and/or lacks due reasoning.
- (6) The sub judge decision was taken under a misconception of fact.

The applicants in their (written) address have contended that the promotions of the interested parties from the rank of Chief Inspector to Superintendent "B" were wrongly effected by the Chief of Police, on the approval of the Minister of Interior, because the applicable section is s. 13(1) of the Police Law, Cap. 285, (as amended by Laws 19/60 and 21/64) and not section 13(2), and therefore they should have been effected by the Minister himself and not by the

Chief of Police; the promotions consequently were effected contrary to Law and/or were done by non-competent organ and/or in excess of power.

Section 13 of Police Law, Cap. 285 (as amended by Laws 19/60, 21/64 and 29/66 provides:

“s. 13 (1) Gazetted officers shall be appointed, promoted and discharged by the Minister.

(2) The Commander with the approval of the Minister appoints, enlists, promotes and discharges all members of the Force up to and including the rank of Chief Inspector.

(3)

“ ‘A gazetted officer’ according to Cap. 285, s. 2, and Not. 210 published in Suppl. III to the Official Gazette of the Republic dated 5.7.1974, is: ‘A Police Officer of and above the rank of Superintendent ‘B’...”

As the matter on the material produced was not very clear as to who effected the promotions particularly so in view of the statement in the opposition that “the Minister... gave his approval for the promotion of the interested parties...” in question the hearing of the case was re-opened and arguments and clarifications were invited on the issue. It was common ground that the appropriate organ to make the promotions in question was the Minister of Interior and not the Chief of Police and that anything said to the contrary in the written address of counsel for the respondents should be read accordingly.

As regards the factual background of this issue a number of exhibits were produced from which it is made clear that these promotions were made by the Minister of Interior and that the relevant offers to each one of the interested parties were made by him. In fact there follows the aforementioned statement the sentence “...and sent to each one through the Chief of Police, a personal appointment to the rank of Superintended ‘B’” which shows that the appointments were made by him and the use of the words “approval” was only a wrong expression, with no legal significance.

This ground therefore cannot succeed. In fact counsel for the applicants after the clarifications given has very fairly left the matter in the hands of the Court.

5 Before I proceed any further I find it convenient to deal with the recourses of Antonis Kyriakides (No. 139/1980), and that of Costas C. Zavros (No. 144/80). Antonis Kyriakides was rated by the Selection Board as being among the candidates 31st in order of merit though strongly recommended by his Divisional Commander, as in fact almost every candidate was so recommended by his respective Divisional Commander.

10 Applicant Costas Zavros was rated by the Selection Board as being among the candidates 45th in order of merit. On this rating which obviously was accepted by the Chief of Police in his recommendation to the Minister both these applicants were on merit far below the interested parties and their recourses should be dismissed on the ground that they have failed to establish striking superiority as against those selected for promotion and that the sub
15
20
25
30
35
40
45
50
55
60
65
70
75
80
85
90
95
100
105
110
115
120
125
130
135
140
145
150
155
160
165
170
175
180
185
190
195
200
205
210
215
220
225
230
235
240
245
250
255
260
265
270
275
280
285
290
295
300
305
310
315
320
325
330
335
340
345
350
355
360
365
370
375
380
385
390
395
400
405
410
415
420
425
430
435
440
445
450
455
460
465
470
475
480
485
490
495
500
505
510
515
520
525
530
535
540
545
550
555
560
565
570
575
580
585
590
595
600
605
610
615
620
625
630
635
640
645
650
655
660
665
670
675
680
685
690
695
700
705
710
715
720
725
730
735
740
745
750
755
760
765
770
775
780
785
790
795
800
805
810
815
820
825
830
835
840
845
850
855
860
865
870
875
880
885
890
895
900
905
910
915
920
925
930
935
940
945
950
955
960
965
970
975
980
985
990
995

judice decisions were reasonably open to the Minister in the circumstances.

As regards applicant Zavros, there appears to be an additional ground why his recourse should have been dismissed. In the documents produced (exhibit 5) it is shown that he was born on the 17th January 1920, a date which is not in dispute. Even if I were to allow thirteen days to be added to that date, in view of the change of calendar he is still considered to have been born in January 1920 which means that when the sub judice decision was taken by the Minister he must have had retired from the service and therefore he was not eligible for promotion. It is correct to say that the respondents have not in their opposition raised the ground of absence of legitimate interest by this applicant but I felt duty bound to examine this aspect of the case *ex proprio motu*.

With the dismissal of these two recourses there remain as interested parties whose promotions are challenged the following: In recourse No. 132/80, there are challenged the promotions of all interested parties except Neophytos Sofocleous and Chrysanthos Economides.

By recourse No. 135/80 there are challenged the promotions of all interested parties except that of Yiannis Adradjiotis and in recourse No. 136/80, there are challenged the promotions of all interested parties except that of Yiannis Adradjiotis and of Andreas Moustakas.

5

Having dealt with these two recourses I turn now to the three remaining ones. It has also been argued by counsel for applicants that the respondents in considering the applicants' suitability for promotion took into account in respect of applicants Kypros Gregoriou (Case 132/80), Petros Stylianides (Case 135/80) and Georghios Kouis (Case 136/80) adverse reports from the Central Information Service, KYP, concerning their loyalty and devotion to duty, in view of which they were considered as not eligible for promotion. They have argued that since such reports were adverse, they should not have been considered at all, but in any event, since they were so, they should not have been accepted on their face value without first having been looked into and without informing the applicants and giving them the right to be heard in relation thereto, in accordance with the rules of natural justice.

10

15

20

The respondents, on the other hand, who admit that the Chief of Police did consider such reports in the instances of the aforementioned applicants, contend that in accordance with a legal opinion dated 7.1.1980, of the Deputy Attorney-General which the Chief of Police had before him at the relevant time, such reports of KYP were rightly considered since it was for the purpose of valuation of the candidates and of ascertaining their general behaviour for the purposes of promotion, provided of course the contents of such reports do not constitute disciplinary offences.

25

30

Before I proceed any further I find it necessary to reproduce here the contents of the said reports. For applicant Kypros Gregoriou same reads as follows:

"His loyalty is put in doubt on the following facts or information.

35

(a) From written and signed statements and/or other exhibits it appears that he:

(1) During the first phase of the Turkish invasion he

was with other officers of the Police and Ministers of the the then President at Malounda where the Headquarters of the National Guard and the offices of the then 'Government' were moved.

- 5 (2) He works and within the narrow limits he shows no activity in support of the Government or other situations. He was posted at the Headquarters on account of his links with the Chief of Police at the time of the Coup d' Etat, Pantelides."

10 As regards applicant Petros Stylianides the report of KYP reads as follows:

"His loyalty is put in doubt on the basis of the following elements and/or information:-

- 15 (a) From written signed statements and other exhibits it appears that he:

- (1) Upon the commencement of the Coup d' Etat he was posted in charge of the guards of Sampson and little later at the post of Staff Officer to the Chief of Police.
- 20 (2) During the Coup d' Etat he had contacts with Reserve Officers involved in the Coup d' Etat and other leaders of the Coup d' Etat.
- (3) During the Coup d' Etat together with other Coup d' Etat participants, he went to the Hotel School in order to arrange its conversion into a Presidential Palace.
- 25

Observations:

30 Before the Coup d' Etat he was loyal but upon its commencement on account of friendship with Sampson and Michalakakis Pantelides he was posted in the aforesaid posts. Now he appears to be loyal."

As regards applicant Georghios Kouis, the following appears:

35 "His loyalty on the subject is put in doubt on the basis of the following elements and/or information:-

(a) From written information in our hands he appears to be burdened with the following:

(1) The Acting Inspector A. Efstathiou said to the Minister of Sampson, Droussiotis that he was giving him good pieces of information. 5

(2) Another information presents him as involved in EOKA 'B' under the name of 'Polyzoos'.

Observations:

With regard to information No. 2 above, there have been investigations but none has been ascertained." 10

It is obvious that the contents of the aforesaid reports do not attribute any criminal or disciplinary offence as such as having been committed by any of the three officers to have been considered as taken into consideration in violation of the rules of Natural Justice and therefore rendering the sub judice decision as invalid on account of wrong procedure. 15

I need not therefore deal with the issue any further as the principles governing such matters have been dealt in a number of cases including inter alia *Tsangarides and Others v. The Republic* (1981) 3 C.L.R. 117; *Ierides and Another v. The Republic* (1983) 3 C.L.R. 1028; *Haviaras v. The Republic* (1981) 3 C.L.R. 415; *Hadjigeorghiou v. The Republic* (1981) 3 C.L.R. 587; *Iacovides v. The Republic* (1981) 3 C.L.R. 305 and *Koudounas v. The Republic* (1981) 3 C.L.R. 46. And more recently in *Michael and Others v. The Republic* (1984) 3 C.L.R. p. 1358. 20 25

In any event they do not appear to have materially affected the sub judice decision inasmuch as applicant Styli- anides was 16th in order of merit on the list prepared by the Selection Board and applicant Kouis 30th. It is true that applicant Gregoriou was 8th but the report on him discloses nothing substantiating any doubts as to loyalty. This ground therefore fails. 30 35

Examining the sub judice decisions in the light of the material before me and the principle enunciated in the case of *Frangos v. The Republic* (1970) 3 C.L.R. 312,

that in selecting the most suitable candidate for appointment to high office in the administrative structure the appointing authority is vested with wide discretionary powers and no doubt the post of Superintendent "B" in the police hierarchy is a high office, I have come to the conclusion that the applicants have failed to establish striking superiority and that the sub judice decision was reasonably open to be taken by the respondent Minister in the circumstances.

- 5
- 10 In the result I hold that no ground exists entitling or requiring me to interfere with the result of the exercise of the discretion of the appropriate organ in selecting the interested parties as being the most suitable for promotion to the post in question and the recourses are accordingly dismissed
- 15 with no order as to costs.

Recourses dismissed.
No order as to costs.