

1986 July 21

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ANDREAS L. MAKRIS,

Applicant,

v.

- THE REPUBLIC OF CYPRUS, THROUGH
- 1. THE MINISTRY OF INTERIOR AND/OR
THE MINISTER OF INTERIOR,
- 2. THE CHIEF OF POLICE.

Respondents.

(Case No. 410/85).

Police Force—Promotions—Review procedure—Review Board set up by Order 11 of the Orders of the Chief of Police dated 12.3.79—Said Order invalid—The Police Law, Cap. 285, section 13 as amended—Conclusions of Board have no legal importance—At the most they are of “internal nature”—Chief of Police has no duty to communicate such conclusions. 5

Administrative act—Executory—Informatory—An *informatory act cannot be made the subject of a recourse.*

Administrative Law—Omission—Meaning of—A failure to do something required by law. 10

Constitutional Law—Equality—Constitution, Article 28.

On the 1.3.80 there were promotions from the rank of Chief Inspector to Superintended B in the Police Force. The applicant, a Chief Inspector of the Force, objected to the said promotions. His objections were placed before a Revisional Board set up in accordance with Order 11 of the Orders of the Chief of Police dated 12.3.79. 15

By letter of his counsel dated 12.2.85 the applicant requested the Chief of Police to inform him of the conclusions of the Review Board. By letter dated 12.3.85 the Chief of the Police informed the applicant that it is not possible to comply with his request, because the said Board did not have any legal validity or substance and the Supreme Court has decided that the procedure of evaluation followed was invalid because the evaluating bodies had not been set up in accordance with the Police Law and Regulations.

As a result the applicant filed the present recourse.

Held, dismissing the recourse: (1) The Review Board in question has no legal substance, because Order 11 of the said Orders provides for "regulations" which have not been approved in accordance with section 13 of the Police Law, Cap. 285 as amended. The conclusions of the Board cannot, therefore, have any legal force or importance, but are at the most of an "internal nature" with the mere purpose of advising the Minister of Interior and the Chief of Police. The sub judice decision did not produce any legal results and, therefore, lacks executory character. It is merely of an informative nature and, as such, cannot be made the subject of a recourse under Article 146 of the Constitution.

(2) The recourse would in any event be dismissed, even if the sub judice decision is assumed to be of an executory nature, for the following reasons, namely: (a) The sub judice act is not an omission or a refusal to act. In view of the fact that the conclusions of the Board could not have any legal results, the Chief of Police is clearly under no duty to act upon them or communicate them to any complainant. Since an omission is the failure to do something required by law, the Chief of Police cannot be considered as having in this case committed an omission; and even if he had such duty, the sub judice act is not an omission, but a negative decision. (b) Applicant's allegation that his prospects of promotion were adversely affected by the sub judice act cannot stand, (c) There has been no discrimination as alleged by the applicant. Even if the conclusions of the Board had

been communicated to other persons, the principles of equality could not come into play in this case, and (d) The sub judice decision is duly reasoned.

Recourse dismissed.

No order as to costs.

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Cases referred to:

Michael v. Republic (1984) 3 C.L.R. 1364;

Pitsillos v. Republic (1985) 3 C.L.R. 2819.

Recourse.

Recourse against the refusal of the respondents to communicate to applicant the decision of the Review Board in respect of the examination of his application as regards his non-promotion to the rank of Superintendent "B" in the promotions of March, 1980. 10

L. Papaphilippou, for the applicant.

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A. Vladimirov, for the respondent.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks:

- (a) A declaration of the Court that the act and/or decision of the respondents not to communicate to the applicant the decision of the Review Board in respect of the examination of his application or objection as regards his nonpromotion to the rank of Superintendent B in the promotions of March, 1980, is null and void and of no legal effect whatsoever. 20 25
- (b) A declaration of the Court that the omission of the respondent to communicate to the applicant the aforesaid decision of the Review Board is null and void and contrary to the law. 30

The applicant enlisted in the Police Force on 15th January 1950, he served through the ranks in various departments and was finally promoted to the rank of Chief Inspector. He served both in rural and urban areas and

since the 28th January 1980 he is serving as Assistant Divisional Police Commander at Larnaca.

5 On the 1st March, 1980, there were promotions from the rank of Chief Inspector to Superintendent B. For the purpose of these promotions a Selection Committee was set up in accordance with the standing procedure as set out in *Order 11 of the Orders of the Chief of Police*, dated 12th March, 1979 to evaluate the candidates. The applicant was placed 14th in order of priority.

10 As against these promotions objections were submitted by the applicant, on the 12th March, 1980, and by others who were also not promoted. Such objections were placed for examination before a Revisional Board set up in accordance with the aforesaid Order 11. This Board heard 15 the applicant, among others, and after examining the circumstances of each case submitted its findings to the Minister of Interior who in turn invited the views of the Chief of Police on such findings.

20 By letter of his counsel dated 12th February 1985, the applicant requested the Chief of Police to inform him of the conclusions of the Review Board, to which letter the Chief of Police replied on the 12th March, 1985, *inter alia*, as follows:

25 "I would inform you that the said Board did not have any legal validity or substance, it was set up by the then Minister of Interior on the basis of an administrative arrangement and both the inquiry as well as its conclusions were of an advisory nature to him. As far as I know no action was taken for the 30 implementation of its conclusion.

35 Since then the Supreme Court has decided that the procedure of evaluation followed was invalid for the reason that the evaluating bodies had not been set up in accordance with the provisions of the Police Law and Regulations.

In the light of the above circumstances I regret to inform you that it is not possible to comply with your request."

As a result of this letter the applicant filed the present recourse which is based on the following grounds of law:

1. The respondents acted contrary to Art. 29.2 of the Constitution in that they failed to decide and to reply to the applicant. 5
2. The respondents by their omission adversely affected the position of the applicant in the service as they have deprived him of his right to promotion.
3. The respondents acted in a discriminatory way towards the applicant. 10
4. The sub judice decision lacks due reasoning.
5. The respondents acted in breach of the principles of good and proper administration.

It was argued by counsel for the applicant that the Review Board decided not to and/or failed to reply to his application—even though as he alleges the conclusions of the Board were in his favour—contrary to Article 29.2 of the Constitution which requires the administration to reply duly to written requests or complaints. 15

In respect of this, it was put forward on behalf of the respondent as a preliminary objection that the act or omission complained of is not of an executory character in that it does not create any direct legal results, nor was the respondent under any duty to act in a positive manner, but is instead merely informative and as such is outside the ambit of Article 146 of the Constitution. 20 25

I have no doubt in my mind that the sub judice decision/letter is not of an executory nature, primarily because I agree that it produces no legal results. There is no doubt that the Review Board in question which was set up by virtue of direction by the Minister of Interior to inquire into complaints and/or objections concerning promotions, is not a body which has any legal substance not having been set up in accordance with the provisions of the Police Law and Regulations and/or any other law or regulations, because the aforesaid Order 11 provides for “regulations” which have not been approved in accordance 30 35

with section 13 of the Police Law, Cap. 285, as amended; they are thus invalid and can therefore produce no legal results. Such "regulations" of Order 11 have so been declared invalid by this Court in the case of *Michael v. Republic* (1984) 3 C.L.R. 1364 at pp. 1370, 1371, 1376-1377.

Consequently since the setting up of the Review Board is defective, its conclusions cannot have or be of any legal force or importance but are at the most of an "internal" nature with the mere purpose of advising the Minister of Interior and Chief of Police. Such conclusions cannot in any way be considered as binding or capable of being enforced.

For the above reasons I consider that the letter of the Chief of Police can be nothing more but of merely an informatory character and as such cannot be challenged by means of a recourse under Article 146. In the case of *Modestos Pitsillos v. Republic* (1985) 3 C.L.R. 2819 it was stated by the Full Bench of this Court upholding the first instance judgment that a letter by the Chief of Police containing information regarding the outcome of Police investigations, at p. 2822 that:-

"On the other hand in so far as however, the said letter of the Chief of Police contains merely information regarding the outcome of police investigations as regards the complaint of the appellant, and this appears to be the more certain in our view nature of it, it is not, and in any event it cannot purport to communicate to the appellant an executory administrative act and being only a document of an informative nature, it is not capable of being the subject of a recourse under paragraph 1, of Article 146 of the Constitution."

However, even if it were to be found that such letter is of an executory nature, I would still not consider that it constitutes either an omission or a refusal to act.

Since, as stated above, the conclusions of the Review Board are not capable of producing any legal results and are at the most of an internal nature, the Chief of Police is clearly under no duty to act upon them or to communicate them to any party complaining. And since an omission is the failure to do something required by law, a failure to discharge a duty, the Chief of Police having no such duty, cannot be considered as having committed an omission.

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In any case, even if there were a duty, I would not consider the letter as amounting to an omission but to a negative decision.

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The second ground of law put forward by the applicant is that the respondents by their alleged act or omission have adversely affected the prospects of promotion of the applicant.

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As rightly argued by the respondents such alleged omission not to communicate the conclusions of the Review Board cannot have any bearing, either on the non-promotion of the applicant or his future prospects for promotion, being a matter totally unconnected with the entire process of promotions, past and future and thus of no relevance. Moreover as already stated above, both the Board and its conclusions have been considered as invalid. This argument of the applicants must therefore fail.

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The third argument of the applicant is that the respondents have acted in a discriminatory way as regards the applicant. I also consider that this matter is again irrelevant. There is no evidence or allegation that the conclusions of the Board have been communicated to anybody else but even if so, in view of the invalidity of such conclusions, I fail to see how the principles of equality came into play in this instance or how could such invalid conclusions, or their non-communication discriminate the applicant in any way. I must therefore dismiss this allegation also.

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As regards the final ground that the sub judice letter lacks due reasoning, I find that sufficient reasoning is

contained in the letter itself which adequately explains the reasons for the non-communication of the requested information.

5 In the result I find that for the reasons stated above this recourse must fail and is hereby dismissed with no order as to costs.

Recourse dismissed.

No order as to costs