

1986 November 29

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

COSTAS KOTSONIS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION.

Respondent.

(Case No. 21/76).

Public Officers —Promotions —Retrospectivity —Permissible, if allowed by Law either expressly or by necessary implication—The Budget Law 1975—Provision for the promotion of Accounting Officers, 2nd Grade to Accounting Officers, 1st Grade, if certain requirements satisfied—The implications from the use of the word “may”—Commission not bound to effect such promotion retrospectively. 5

A provision in the Budget Law of 1975 allowed the promotion of a number of Accounting Officers, 2nd Grade to the post of Accounting Officer, 1st Grade, provided they possessed the required University Degree or professional accounting qualification and have completed one year's service on the top salary scale of the post of Accounting Officer, 2nd Grade. 10

The applicant, who on 30.6.75 completed one year's service on the top salary scale of the post of Accounting Officer, 2nd Grade and possessed the required University Degree, applied by letter dated 24.6.75 for his promotion to the post of Accounting Officer, 1st Grade as from 1.7.75. 15 20

At its meeting of 22.11.75 the respondent Commission decided to promote the applicant to the said post as from 1.12.1975.

Feeling aggrieved, the applicant filed the present recourse, claiming that his promotion ought to have been made with retrospective effect as from 1.7.85.

Held, dismissing the recourse: (1) There is no doubt that promotions can be made with retrospective effect, if so authorised by law, either expressly or by implication.

(2) In this case the relevant provision in the Budget Law does not provide, either expressly or by implication, for the retrospectivity of the promotions to the aforesaid post, but on the contrary the word "may" gives a discretion to the Commission and it cannot be said that the Commission was bound to promote the applicant retrospectively.

(3) The contention that the sub judice decision is not duly reasoned is untenable, as there is ample reasoning in the file.

*Recourse dismissed.
No order as to costs.*

Cases referred to:

Panayides v. The Republic (1972) 3 C.L.R. 467 and on appeal (1973) 3 C.L.R. 378;

Afxentiou v. The Republic (1973) 3 C.L.R. 309.

Recourse.

Recourse for a declaration of the Court that the omission of the respondent to promote the applicant to the permanent post of Accounting Officer 1st Grade in the Treasury Department is null and void and of no legal effect whatsoever and that what has been omitted should have been performed.

A. Panayiotou, for the applicant.

A. M. Angelides, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

MALACHTOS J. read the following judgment. The applicant in this recourse was an Accounting Officer, 2nd Grade, serving in the Treasury Department. This post is combined with the post of Accounting Officer 1st Grade for those officers possessing an appropriate University degree or professional accounting qualification. They may be promoted to that post on completion of one year service on the top scale of the post of Accounting Officer 2nd Grade, irrespective of the existence of vacancies or the number of posts in the 1st Grade. This is provided for in the memoranda to the 1975 Estimates for the Treasury Department at p. 122 and 123 (English text) items 6 and 7.

The applicant completed a year of service on the top scale of his salary as an Accounting Officer 2nd Grade on the 30.6.75. Thereupon he wrote a letter (exhibit 1) dated 24.6.75, addressed to the Accountant-General which reads as follows:-

"I have the honour to refer to the conditions of my appointment which are included in the explanations memoranda to the relevant chapter of the yearly estimates, according to which Accounting Officers 2nd Grade with academic or accounting qualification may be promoted to the post of Accounting Officer 1st Grade, upon the completion of one year service on the top salary scale of their post.

In view of the fact that on the 30th June, 1975, I completed one year on the top salary scale of the post of Accounting Officer 2nd Grade and I fulfil the above mentioned conditions—I possess a University Degree—I request that you make the required arrangements through the Public Service Commission for my promotion to the post of Accounting Officer 1st Grade, as from the 1st July, 1975.

I believe I will have your favourable treatment as regards my promotion to the post of Accounting Officer 1st Grade as from the 1st July, 1975."

of an average standard and although we should have reasonably expected a better performance, nevertheless, I cannot say that their services have not been satisfactory as a whole.

I recommend the promotion of all of them." 5

The Commission met on 22.11.75 and considered the promotions. They decided to promote all applicants after considering their merits, qualifications, experience and the recommendations of the Accountant-General on the matter. The promotion was to take effect as from 1.12.75. The applicant was informed of this decision by letter (exh. 5), dated 27.11.75 by which he was offered the post of Accounting Officer 1st Grade, with effect from the 1st December, 1975. He gave his reply by a letter dated 12.12.75 (exh. 6) addressed to the Chairman of the Public Service Commission, which reads as follows:- 10 15

"I refer to your letter No. 12667, dated the 27th November, 1975, in order to inform you that I accept the offer to the permanent post of Accounting Officer 1st Grade in the Treasury, with a reservation as regards the date fixed for my promotion, that is, as from the 1st December, 1975. 20

In my humble opinion the date of my promotion should have been the 1.7.1975 for the reason that I have completed one year's service at the top scale of Accounting Officer 2nd Grade on 30.6.1975. This is stated in the Ordinary Budget for the year 1975, chapter 45A, article 1(7) notes No. 6 and 7. 25

On the basis of the above I hereby pray that you would be kind enough to reexamine the matter of the date of my promotion and satisfy my claim." 30

The Public Service Commission met on the 24.12.75 in order to reconsider the date of the applicant's promotion together with that of another officer from those who were promoted and decided, on the basis of two legal advices dated 15.3.71 and 20.11.71, respectively, to turn down his application. The applicant was informed about this decision by letter exh. 8, dated 5.1.76 and consequently he 35

This letter of the applicant, together with those of three other officers requesting the same promotion, were referred to the Public Service Commission with a covering letter dated 25.7.75, (exh. 2), which reads as follows:

5 “There are hereby referred to you the applications
of the following Accounting Officers 2nd Grade for
promotion to the 1st Grade on the basis of the pro-
vision which exists for those possessing a university
10 degree or professional accounting qualifications, irres-
pective of the existence of vacant posts or the number
of posts in the 1st Grade:-

Chrysostomos Tourvas

Plastiras Christophides

Neophytos Hadji Evangelou

15 Costas Kotsonis.

Mr. Christophides has left for Australia on a 12 month leave without pay in accordance with the approved scheme.”

20 The Accountant-General did not express his views on
the matter in his letter of 25.7.75 until the 14.11.75, when
he addressed a new letter to the Public Service Commission
(exh. 3) expressing his views, which reads as follows:-

25 “In continuation of my letter P. F. 16360 of the
25th July, 1975, by which the applications of four
accounting officers 2nd Grade were forwarded to you
for promotion to the 1st Grade, I wish to state that
Mr. Christophides has already been seconded to the
1st Grade but he is entitled, on the basis of his quali-
fications, to be promoted to the permanent post of
30 Accounting Officer 1st Grade. He has returned from
Australia.

35 He is considered to be the most capable of the four
applicants, having worked conscientiously wherever
he has been posted. The remaining three, that is Ne-
ophytos Hadji Evangelou, Costas Kotsonis and Chry-
sostomos Tourvas are simply good Accounting Officers

filed this recourse, by which he claims, as stated therein, a declaration of the Court to the effect that the omission of the respondents to promote the applicant to the permanent post of Accounting Officer 1st Grade in the Treasury Department as from 1.7.75, is null and void and of no legal effect whatsoever and whatever has been omitted should have been performed.

The grounds of law on which the recourse is based, as stated therein and as argued by counsel for applicant, are the following:

1. The act and/or decision of the respondents is not duly reasoned.

2. The act and/or decision of the respondents is contrary to law and/or was taken in excess and/or abuse and/or wrong exercise of their discretionary power, as the date of the promotion of the applicant is binding and definite.

Counsel for applicant, besides submitting that the decision of the respondent Commission not to promote the applicant retrospectively, is not duly reasoned, further submitted that the said decision is contrary to law and in excess of power. He also argued that although individual administrative acts cannot have retrospective effect there are, nevertheless, some exceptions to the general rule, the most acceptable one being the case where there is provision to the contrary in the law applicable in the particular case. He cited the case of *Petrakis Panayides v. The Republic*, (1972) 3 C.L.R. 467 in which reference is made on the above point to the decisions of the Greek Council of State Nos. 880/1932, 418/1945 and 422/1958.

Counsel for applicant, finally submitted that in applying the relevant part of the Ordinary Budget of 1975 Chapter 45A, the duty of the respondent Commission was only to ascertain whether the applicant possessed the required qualifications provided by the Schemes of Service and, if so, it was bound to promote him retrospectively as from the

day he had completed a year's service on the top scale in the post of Accounting Officer 2nd Grade. The respondent Commission had no power to exercise any discretion under the aforesaid provision of the Budget Law.

There is no doubt that promotions can be made re- 5
spectively if so authorised by law either expressly or by
implication and the case of *Panayides v. The Republic*,
supra, is good law in this respect. That case, however, was
distinguished in the case of *Afxentiou v. The Republic*, 10
(1973) 3 C.L.R. 309, where it was held that the fact of
creation of a post by the Budget Law from the first of the
year was not in itself sufficient justification of making the
promotion retrospectively.

It should be noted here, that the case of *Panayides v.* 15
The Republic, was approved by the Full Bench of this
Court on Appeal and is reported in (1973) 3 C.L.R. 378.

In the present case we have a provision in the Budget
Law allowing the promotion of a number of Accounting
Officers 2nd Grade, who possess the proper University de- 20
gree or a professional accounting qualification. It provides
that they may be promoted to 1st Grade on completion of
one year's service on the top salary scale of their post.

To my mind, the aforesaid part of the Budget Law does
not provide either expressly or by implication for the re- 25
trospectivity of the said promotions but, on the contrary,
the word "may" gives a discretion to the Public Service
Commission and it cannot be said, as counsel for applicant
submitted, that the Commission is bound to promote the
applicant retrospectively.

Before concluding this judgment, I must say that I 30
find no merit as regards the submission of counsel for ap-
plicant that the decision of the respondent Commission not
to promote the applicant retrospectively is not duly rea-
soned. There is ample reasoning in the file to the effect

that the respondent Commission does not agree with the applicant's allegation as regards the interpretation given by him of the relevant provision of the Budget Law contained in his letter of 12.12.75.

- 5 For the reasons stated above, this recourse fails and is hereby dismissed.

Recourse dismissed.

No order as to costs.