

1986 April 16

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

STELIOS NICOLAOU PAPPAS AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF INTERIOR,
2. THE CHIEF OF THE POLICE,

Respondents.

*(Consolidated Cases Nos. 698,
727, 732, 756, 757, 758, 787,
791, 792, 794 of 1985).*

Police Force—Promotions (Temporary) to rank of Chief Inspector—The Police Law, Cap. 285 as amended by Law 29/66, s. 13(2)—The Police Regulations 1958, regs. 10 and 11—Police Authorities bent on bypassing an annulling decision of this Court—Sub judice promotions made in climate of utter confusion, affecting both their legal and factual basis—Due inquiry, failure of—It is an abuse of power to make appointments or promotions under the guise of temporariness—A “temporary appointment or promotion” should be made for “a foreseeable short duration”.*

5

10

The promotions of the interested parties to the post of Chief Inspector in the Police Force were annulled by a decision of this Court given on 22.5.85. The Chief of Police did not heed the advice of the Deputy Attorney-General and disregarded the duty of “active compliance” with the annulling decision (Article 146.5 of the Constitu-

15

* See *Lefkatis and Others v. Republic* (1985) 3 C.L.R. 1372 upheld on appeal in *Stavrou and Others v. The Republic* (1986) 3 C.L.R. 361.

tion). He remained inactive until the future course of action of the police was decided.

5 The official announcement of the annulment in question, made on 20.6.85, was accompanied by an invitation of the Chief of the Police to Section Leaders and Divisional Commanders to make recommendations for temporary promotions to the post of Chief Inspector. The response was immediate and by and large identical; with one exception they all replied on the afternoon of the same day and recommended a similar course of action—the temporary appointment of everyone whose promotion had been annulled.

10 These recommendations were made on the basis of reg. 11 of the Police Regulations 1958 empowering Divisional Commanders and group-leaders to make acting appointments, with the approval of the Chief of Police, made necessary by the temporary absence of an officer from the force. Evidently, the Divisional Commanders and Section Leaders failed to appreciate what was required of them.

20 The Chief of Police made no effort to remedy the mistake and apprise his subordinates of what was truly asked of them. He perpetuated the error by treating their recommendations as furnishing a basis for making temporary promotions in the force. By his letter dated 21.6.85 to the Minister of Interior he justified the proposed action by referring to the recommendations of the Divisional Commanders and Section Leaders, suggested that the officers in question be promoted temporarily under reg. 30 10 of the said Regulations and ended his letter by a request for the approval by the Minister of the promotions under s. 13(?) of the Police Law, Cap. 285 as amended by s. 2 of Law 29/66. Surprising as it may appear the recommendation was for the retrospective temporary promotion of the interested parties from 20.6.85, 35 the very day of the annulling decision.

The Minister gave his approval and as result the present recourses were filed.

It should be noted that as a matter of law, power to make temporary promotions to the rank of Chief Inspector, vests exclusively in the Chief of Police. In this case the final act or promotion was that of the Minister, signifying his approval under s. 13(2). 5

Held, annulling the sub judge decision: (1) The sub judge promotions were made without holding a fresh inquiry and without consideration of the merits and suitability of anyone other than those promoted.

(2) The haste with which the promotions were made, the failure to follow the advice of the Deputy Attorney-General and, more important still, the reappointment of everyone whose promotion had been annulled by the Court, furnish strong evidence that the Police Authorities were bent on bypassing the decision of the Court to the detriment of legality. Moreover, scrutiny of the decision and steps preliminary thereto, reveal the promotions were made in a climate of utter confusion, without proper regard to the provisions of the law empowering the making of temporary promotions. The confusion affected both the factual and legal basis of the decision. 10 15 20

(3) The position of counsel for the respondents that the sub judge promotions were made under reg. 10 is untenable. If it was in the contemplation of the Chief of Police to make temporary promotions under reg. 10, he abused his power by subordinating its exercise to the approval of another authority. As, however, on the facts surrounding the sub judge promotion it cannot be maintained that they were made under reg. 10, the matter will not be further pursued and the issue whether reg. 10 was superseded by s. 13(2) need not be decided. 25 30

(4) The sub judge promotions were made under s. 13(2). The Minister did not hold any inquiry with view to satisfying himself on the propriety of the recommendations of the Chief of Police. Therefore apart from the factual and legal misconceptions and irregularities vitiating the acts preliminary to the final decision, this is an additional ground for annulling such decision. 35

(5) As it emerges from the decision in *Republic v. My-*

3 C.L.R. **Parpas and Others v. Republic**

lonas (1985) 3 C.L.R. 1608 it is inherent in the concept of “temporary appointment” or “promotion” that it should be made for “a foreseeable short duration”. The ratio of this decision is that it is an abuse of power to make appointments or promotions under the guise of temporariness, as indeed appears to be the case with the sub judice promotions.

Sub judice decision annulled.

Cases referred to:

- 10 *Tiooulias v. The Republic* (1983) 3 C.L.R. 465;
Pantelouris v. Council of Ministers (1985) 3 C.L.R. 852;
Republic v Mvlonas (1985) 3 C.L.R. 1608.

Recourses.

15 Recourses against the decision of the respondents whereby the interested parties, whose promotions to the post of Chief Inspector were annulled by the Supreme Court on 22.5.1985 were promoted to the above post on a temporary basis with retrospective effect as from 20.5.1985.

E. Efsthathiou, for applicant in Case No. 698/85.

20 *A. Triantafyllides*, for applicant in Case No. 727/85.

Ph. Clerides, for applicant in Case No. 732/85.

G. Charalambides, for applicant in Cases Nos. 756/85 and 757/85.

25 *P. Angelides* with *A. Papacharalambous*, for applicants in Cases Nos. 758/85 and 787/85.

Z. Katsouris with *A. Magos*, for applicant in Case No. 791/85.

Ph. Valiantis, for applicant in Case No. 792/85.

A. S. Angelides, for applicant in Case No. 794/85.

30 *M. Florentzos*, Senior Counsel of the Republic, for the respondents.

- A. *Poetis*, for interested parties A. Potamitis, A. Christofi, S. Charalambous, I. Ioannou and L. Soteriades.
- M. *Christodoulou* personally and for P. Pavlou. for interested parties A. Stavrou, Chr. Violaris, P. Kakoullis, Chr. Christodoulides, Th. Stylianou, A. Nicolaidis, A. Charalambous, I. Kokkinoftas and K. Markoullis. 5
- K. *Koushios*, for interested parties Ch. Demetriou. Chr. Hadjichristodoulou and M. Elia. 10
- Chr. Vassiliades*, for interested parties Y. Philippou and N. Papageorghiou.
- R. *Schizas*, for interested party A. Yiannakis.
- I. *Avraamides*, for interested party I. P. Samuel.
- A. *Panayiotou*, for interested parties St. Georghiades and S. Erodou. 15

Cur. adv. vult.

PIKIS J. read the following judgment. To begin, the interested parties were appointed Chief Inspectors under and in accordance with the procedure laid down in the Police (Promotions) (Amendment) Regulations 1983. Their promotions were annulled by a decision of the Supreme Court given on 22.5.85¹, on the ground they had been enacted under a section of the Police Law—Cap. 285, that had been impliedly repealed by the provisions of s. 2, Law 29/662. Following this decision the Chief of the Police sought the advice of Mr. Loucaides, the Deputy, Attorney-General, on the implications of the decision and the legal avenues and procedures open to the police force to fill the gap left by the annulment of the appointments of a number of senior officers. Mr. Loucaides responded immediately to the request and rendered, what I regard, a comprehensive piece of advice, covering every aspect of the questionnaire³. In 20 25 30

¹ See, *Lefkatis and Others v. Republic* (1985) 3 C.L.R. 1372.

² The decision was upheld on appeal in *Stavrou and Others v. Republic* (1986) 3 C.L.R. 361.

³ See, Appendix D' to the Opposition, dated 31/5/86.

the first place, Mr. Loucaides alerted the Chief of the Police to their duty to implement without delay the decision of the Supreme Court, reminding him the police are the authority entrusted with the law enforcement and they, more than anyone else, must demonstrate unfailing obedience to the law; and its commands as authoritatively expressed by the Courts. Any delay on the part of the Police Authorities to give effect to the decision, he pointed out, might create the impression they were defying the decision of the Court instead of implementing it, as their duty demanded. Regrettable as it is, the Chief of the Police did not heed this advice, disregarding the duty cast by para. 5 of Article 146 of the Constitution on the Police Authorities and any other Authority of the State "to active compliance" with every decision of a Court of revisional jurisdiction. He remained inactive, as may be gathered from the sequence of events that followed, until they decided on the future course of action of the police. The official announcement of the annulment of the promotions, made on 20th June, was accompanied by an invitation of the Chief of the Police to Section--Leaders and Divisional Commanders to make recommendations for temporary promotions to the post of Chief Inspector¹. The response to this invitation was immediate and by and large identical; with one exception, they all replied on the afternoon of the same day and recommended a similar course of action—the temporary appointment of everyone whose promotion had been annulled. The following day, the 21st June, 1985, the Chief of the Police adopted their recommendations and recommended to the Minister of Interior their approval pursuant to the provisions of s. 13(2)—Police Law—Cap. 285 (as amended by s.2 of Law 29/66²). Surprising as it may appear, the recommendation was for the retrospective temporary promotion of the interested parties from 20th June, 1985, the very day the decision of the Court was formally announced and implemented in the ranks of the police force. The Minister approved the recommendations of the Chief of the Police on

¹ See, Appendix C' to the Opposition

² See, Appendix E' to the Opposition.

27th June, 1985¹, published in the gazette soon afterwards, on 1.7.85. It is against this decision the recourses are directed, that is, the decision of the Minister of Interior, founded on the recommendations of the Chief of the Police. The above promotions were made contrary to the letter and spirit of the advice of the Deputy Attorney-General. Mr. Loucaides recommended, in the first place, that temporary appointments should, if possible, be avoided. Neither the Chief of the Police nor the Minister seems to have given any consideration to this advice. Worse still, they proceeded to make temporary promotions contrary to the advice rendered by Mr. Loucaides. While he advised that temporary promotions should be made after a process of selection following an inquiry into the merits of the officers eligible for promotion, the sub judge promotions were made without holding a fresh inquiry and without consideration of the merits and suitability of anyone other than those promoted.

The haste with which the promotions were made, the failure to follow the advice of the Deputy Attorney-General and, more important still, the reappointment of everyone whose promotion had been annulled by the Court, furnish strong evidence that the Police Authorities were bent on bypassing the decision of the Court to the detriment of legality. Moreover, scrutiny of the decision and the steps preliminary thereto, reveal the promotions were made in a climate of utter confusion, without proper regard to the provisions of the law empowering the making of temporary promotions. The confusion affected both the factual and legal basis of the decision. The recommendations of Divisional Commanders and Section-Leaders were made on the basis of reg. 11 of the Police Regulations 1958, empowering Divisional Commander and Group-Leaders to make acting appointments, with the approval of the Chief of the Police, made necessary by the temporary absence of an officer of the force. Perhaps this explains why those who made the recommendations confined their suggestions to the nomination of named officers and omitted to carry out any inquiry into the rival merits of all officers eligible for promotion².

¹ See, Appendix Στ' to the Opposition.

² See, Exhibit Y'.

Evidently, Divisional Commanders and section-leaders failed to appreciate what was required of them. It is a matter of speculation what their recommendations would be had they comprehended it was required of them to make suggestions for temporary promotions in the force.

The Chief of the Police made no effort to remedy the mistake and apprise his subordinates of what was truly asked of them. He perpetuated the error by treating their recommendations as furnishing a basis for making temporary promotions in the force. The confusion under which the Chief of the Police laboured, is evident from his letter to the Minister of Interior of 21.6.85¹. He refers, in the first place, to the recommendations of Divisional and other Commanders for the making of acting appointments, and justifies the proposed action by the reasoning supplied thereto (see para. 4). Then, he suggests that the officers be promoted temporarily, under reg. 10 of the Police Regulations 1958, but ends his submission with a request for the approval by the Minister of the Interior of the promotions under s. 13(2) of the Police Law (as amended by s. 2—Law 29/66).

As a matter of law, power to make temporary promotions to the rank of Chief Inspector, vests exclusively in the Chief of the Police. The approval of the Minister (following the delegation made to him of the powers of the Council of Ministers—Decision 768—11.5.61), is only required in the case of gazetted officers, that is, officers above the rank of Chief Inspector. Consequently, if the Chief of the Police was minded to exercise the powers given him under reg. 10, he was dutybound to make the promotions himself. This he omitted to do. The final act of promotion was that of the Minister, signifying his approval under s. 13(2)—Cap. 285.

Counsel for the interested parties invited me to treat the sub judice promotions as made under reg. 10. This is an untenable position for no promotions were made by the Chief of the Police under reg. 10. He took no decision under that provision of the law. The promotions here under re-

¹ See. Exhibit E'.

view were made by the Minister of the Interior on the advice of the Chief of the Police. Whether s. 13(2) of the Law has superseded reg. 10, is a matter that need not be finally decided in this case. Counsel for the interested parties inclined to the view that reg. 10 and s. 13(2) coexist because the power conferred on the Minister under the latter enactment is confined to permanent promotions, a view I incline to doubt. The concept of "promotion" not otherwise qualified, appears to me to encompass, *prima facie*, every elevation in the status of the officer, whether temporary or permanent. If it was in the contemplation of the Chief of the Police to make temporary promotions under reg. 10, he abused his power by subordinating its exercise to the approval of another Authority, namely, the Minister of the Interior. I shall pursue the matter no further for on no view of the facts surrounding the sub judice decision could it be maintained that the promotions were made under reg. 10. They were made under s. 13(2) of the law and their validity must be examined solely from that angle.

The Minister approved the recommendations of the Chief of the Police without holding any inquiry with a view to satisfying himself on the propriety of the recommendations. He merely relied on the written recommendations of the Chief of the Police. His approval of the advice given him gives the impression of rubber-stamping the suggestion of the Chief of the Police. Therefore, the final decision is vulnerable to be set aside apart from the factual and legal misconceptions and irregularities vitiating the acts preliminary thereto, already referred, for the additional reason that the Minister failed to make the necessary inquiries indispensable for the effective exercise of the discretion given him under s. 13(2) of the law¹.

Further, the advice of Mr. Loucaides that the promotions, even if temporary ought to have been made after due evaluation of the suitability of those members of the force eligible for promotion, is well founded in law. As it emerges from the decision of the Full Bench of the Supreme Court in *Republic v. Mylonas*², it is inherent in the concept

¹ See, inter alia, *Ttooulias v. Republic* (1983) 3 C.L.R. 465; and *Pantelouris v. Council of Ministers* (1985) 3 C.L.R. 852.

² (1995) 3 C.L.R. 1608.

of "temporary appointment" or "promotion" that it should be made for "a foreseeable short duration". As the Supreme Court observed, any attempt to make temporary promotions on any other basis, "it savours either of a secondment or an unorthodox disguised filling of the vacancy". The ratio of the above decision is that it is an abuse of power to make appointments or promotions under the guise of temporariness, as indeed appears to be the case with the promotions here under consideration. Nine months after the temporary promotions were made, no one knows or can predict with any degree of certainty when the organic posts will be permanently filled. Mr. Florentzos informed us this may become possible when new regulations are approved and enacted. When this will become possible, no one knows. The inescapable inference is that the Chief of the Police, as well as the Minister of the Interior, effected the temporary promotions without proper regard to the power vested them. The temporary promotions were not made for any fixed term or for any foreseeable period; they were made for an indefinite future period of time. This is yet another ground for annulling the decision.

Far from sustaining discipline in the force, the professed aim of the respondents in making the promotions, temporary promotions for an indefinite future period of time, undermine discipline in the force and engender discontent amongst its members. By their nature, temporary promotions or appointments are meant to satisfy temporary needs of the service and not, as in the present case, permanent needs. Temporary promotions are a stop-gan procedure, not a substitute for the satisfaction of permanent needs of the service.

Ending this judgment, I cannot but express disapproval at the sequence of events following the decision of the Court of 22.5.85, whereby the promotions of the interested parties were annulled. There was marked procrastination on the part of the Police Authorities to give effect to the decision. Worse still, subsequent events are apt to give the impression and, in fact, left me with the impression of an attempt on the part of the Police Authorities to bypass the decision of the Court, while paying lip-service to it. Such conduct on

the part of the police, one of the principal agencies of the law, is harmful to the image of the police and undermines faith in its mission. Active obedience to judgments of the Court, ordained by paragraph 5 of Article 146 of the Constitution, is the hallmark of Administration under the law. Defiance of judicial decisions, it must be stressed as often as necessary, undermines the rule of law and with it the foundations of society.

5

Sub judice decision annulled.