

1987 July 24

[SAVIDES, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PAMBOS POYIATZIS,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE PUBLIC SERVICE COMMISSION,

2. THE MINISTRY OF HEALTH,

Respondents.

(Case No. 366/86).

5 *Public Officers — Transfers — Motion for — Emanates from Head of Department, who must be satisfied that the needs of the service require the transfer of the officer — Power to take the decision vests in the Public Service Commission — Latter must be satisfied that the alleged need exist and whether the proposed transfer is necessary to satisfy such a need.*

10 *Administrative Law — Due inquiry — Public Officers — Transfers — Decision for, taken in accordance with a motion by the Head of Department — Request by the latter that the decision be revoked — Refusal to accept such request — Failure to inquire into the allegation of the Head of the Department, which accompanied his said request, that arrangements were made to meet the needs of the service at Paphos Hospital, where the applicant was transferred by the original decision — Sub judice decision annulled for lack of due inquiry.*

15 The Director of Medical and Public Health Services recommended the transfer of applicant, who is a specialist in General Medicine, from Nicosia to Paphos for the purpose of facing the needs of the service. Notwithstanding applicant's objection, the respondent Commission at its meeting of 11.6.85, decided to transfer the applicant to Paphos.

20 On 21.12.85 the Director requested the Commission to cancel applicant's transfer until the filling of all vacancies in the post of Medical Officer on the basis of the agreed scheme of distribution of posts in the Medical and Public Health Department. The Director mentioned in his letter that the necessary arrangements for the attendance of patients at Paphos Hospital had been made.

After further correspondence between the Commission and the Director, the Commission did not accept the Director's proposal and, as a result the Director wrote to the applicant that his transfer had not been revoked and, thus, should take effect.

Hence this recourse.

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Held, *annulling the sub judice decision*: (1) There can be no doubt that the motion for a transfer emanates from the Head of the Department concerned. Such motion is made after he is satisfied that the needs of the service require the transfer of the public officer. The Public Service Commission has to be satisfied that the alleged need exists and whether the proposed transfer is necessary to satisfy such a need.

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(2) In this case there is nothing in the minutes to show that the Commission paid any heed to what the Director said regarding provisional arrangements for the attendance of patients at the Paphos Hospital or any reason why such matter was ignored.

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(3) In the light of the above the sub judice decision has to be annulled for failure to carry out a due inquiry.

*Sub judice decision annulled.
No order as to costs.*

Recourse.

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Recourse against the decision of the respondent to transfer applicant from Lamaca to Paphos.

A.S. Angelides, for the applicant.

A. Papasavvas, Senior Counsel of the Republic, for the respondents.

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Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicant challenges the validity of the decision of respondent No. 1 whereby he was transferred from Lamaca to Paphos.

The applicant is a specialist in General Medicine and was serving at the material time, at Lamaca Hospital. On 30.5.1985, the Director of Medical and Public Health Services recommended his transfer to Paphos Hospital, where no specialist was serving, for the purpose of facing the needs of the service. The applicant protested to his proposed transfer on account of family and financial reasons. The Public Service Commission at its meeting dated 11.6.1985, decided to transfer the applicant to Paphos as

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from 15.8.1985 stating that having taken into consideration his objections it found that the reasons for his objection are not such as to by-pass the needs of the service. The applicant was so informed by letter of respondent 1 dated 12.6.1985. The effective
5 date of the applicant's transfer was later postponed, upon his request, until the 2nd January, 1986 in order to give him time to solve the problems created by such transfer.

On 21.12.1985, the Director wrote a letter to respondent 1, requesting the cancellation of applicant's transfer until the filling of
10 all vacancies in the posts of Medical Officer on the basis of the agreed scheme of distribution of posts in the Medical and Public Health Department. The Director mentioned in his letter that necessary arrangements for the attendance of patients at Paphos Hospital had been made in the meantime.

15 The Commission considered the request of the Director on 10.1.1986, stating that the procedure for the filling of the post mentioned in the letter of the Director had stopped because the only candidate did not accept the offer made to him and invited the Director to conform with its decision to transfer the applicant.

20 The Director wrote again to the respondent Commission, on 10.2.1986, explaining the position regarding the distribution of the posts of Specialists and Senior Specialists in General Medicine in the three major hospitals of Cyprus, that is, Nicosia, Lamaca and Paphos, as it stood at the time and how the Department proposed
25 to distribute them after the filling of the vacancies in the said posts, posting a Senior Specialist at Paphos Hospital. The Director also stated again that the existing arrangements for the attendance of patients in the General Ward of Paphos Hospital were satisfactory, the medical services rendered were of a high standard and
30 recommended again the cancellation of the applicant's transfer.

The Chairman of the respondent Commission, by letter to the Director dated 24.2.1986, requested to know whether the scheme of distribution of posts to the hospitals concerned which was mentioned in the Director's letter was in existence at the time
35 when the latter originally requested the applicant's transfer, or whether it was a different one. The Director by letter dated 27.3.1986, replied that the scheme was the same one, but that since there was no candidate at the time satisfying the requirements of the scheme of service for the post of Senior
40 Specialist, who was to be posted at Paphos, the transfer of the applicant, who was a specialist, was considered necessary. In the

meantime as stated in the same letter, two specialist-candidates had acquired the required qualifications and after the filling of the posts one of them was to be posted at Paphos and as a result the transfer of the applicant was no longer required. A copy of the scheme of distribution of the posts in the various hospitals was attached to the above letter, which shows a post of Senior Specialist in Paphos Hospital and no post of Specialist. 5

The respondent Commission replied by letter dated 9.4.86, the relevant part of which reads as follows:

«2. The Public Service Commission, having reconsidered carefully your recommendation for the revocation of its decision for the transfer of the officer from Lamaca Hospital to Paphos Hospital as from 2.1.1986, found that there is no reason to review its original decision. On the contrary, the Commission found that it is necessary for a Specialist (General Medicine) to serve in the Paphos Hospital until the posting of a Senior Specialist (General Medicine) becomes possible, by the promotion which will take place in the course of the procedure that started with the last request of the appropriate authority for the filling of two vacant posts of Senior Specialist, one of which in General Medicine. This procedure, however, will take some time and thereafter more time will be required for the submission and consideration of the matter of transfer of the officer promoted. 10 15 20

3. As a result your proposal has not been accepted and thus the decision of the Public Service Commission for the transfer of Mr. Poyatzis from Lamaca Hospital to Paphos Hospital, which was taken upon your proposal and the recommendation of the Director-General, Ministry of Health, continues to be valid.» 25 30

The applicant was informed by letter of the Director dated 29.4.1986 that his transfer to Paphos was not cancelled and should take effect. The applicant filed the present recourse challenging the above decision.

The sole question which poses for consideration is whether the respondent Commission acted rightly in refusing to revoke its previous decision to transfer the applicant, after the appropriate authority requested such revocation on the ground that there was no longer any need for the transfer. 35

Counsel for applicant argued that the Commission has no power, under the law, to effect a transfer on its own initiative, but only after a request by the appropriate authority or the officer concerned; that the assessment of the needs of the service is within
5 the competence of the appropriate authority and once such authority found that the needs of the service no longer required the transfer of the applicant the Commission could not dispute such finding and insist on the transfer in question.

Counsel for the respondent merely submitted that the
10 contention of the applicant that the Commission has no power to assess or dispute the existence or not of the needs of the service is groundless and that the decision of the Commission was properly taken, without making any further legal argument.

There is no doubt that when a transfer is effected by the Public
15 Service Commission in cases where the needs of the services so require, the motion for initiating such transfer emanates from the Head of the Department under which the Public Officer concerned serves. Such motion is made after the Head of the Department is satisfied that the needs of the service require the
20 transfer of a Public Officer. The power to take the decision for the transfer vests in the Public Service Commission which has to be satisfied that the alleged need exists and whether the proposed transfer is necessary to satisfy such need.

In the present case the motion for the transfer of the applicant
25 was initiated by the Director of Medical Services after he had verified that the needs of the service required such a transfer. Before the date that such transfer did materialise the Director, having reached the conclusion that such transfer was not necessary any longer in view of certain developments as a result of
30 the restructuring of the service, moved the respondent for the revocation of its previous decision. After protracted correspondence between the respondent Commission and the Director on the matter, the Director informed the Commission that there was no need for the transfer of a specialist to Paphos as a post
35 of Senior Specialist for Paphos was to be filled soon and that pending such appointment adequate arrangements had been made for the attendance of patients at Paphos Hospital.

There is nothing in the minutes suggesting that the respondent Commission payed heed to what the Director said about

provisional arrangements that had been made for the attendance of patients or any reason why such matter was ignored. It may be inferred that the respondent failed to carry out an inquiry as to what arrangements had been made and whether such arrangements were adequate to meet the situation till the filling of the post of Senior Specialist at Paphos Hospital, before rejecting the proposal for the revocation of the applicant's transfer. 5

By failing to carry out such an inquiry the respondent, in reaching the sub judice decision, did not exercise its discretion properly and for this reason I find that the sub judice decision has to be annulled. 10

Having found as above, I consider it unnecessary to examine any other issue before me.

In the result the recourse succeeds and the sub judice decision is annulled with no order for costs. 15

*Sub judice decision
annulled with no order
as to costs*