

1987 December 11

{SAWIDES J }

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PANAYIOTIS STAVRINIDES,

*Applicant,*

v

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF HEALTH,

*Respondent*

*(Case No 390/87)*

*Public Officers — Transfers — Competence — Transfer from one District to another, involving change of duties — The Public Service Law 33/67, section 48(2)*

*Public Officers — Transfers — Effecting a transfer for disciplinary reasons under the guise of the needs of the service without affording the officer an opportunity of being heard — Illegal*

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The applicant is a Dentist, 1st Grade, and he was posted partly at the Nicosia General Hospital and partly at the new Government Hospital at Lamaca. By the sub judice decision, he was transferred from Lamaca Hospital and Nicosia General Hospital to the outpatients section of Strovolos Hospital and Nicosia General Hospital

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From the contents of two letters which were addressed by the Director of Dental Services to the Director-General of the Ministry of Health it clearly emanates that the transfer of the applicant from Lamaca and Nicosia General Hospital to the outpatients section of Strovolos and Nicosia General Hospital was in fact taken as a disciplinary sanction under the disguise of the needs of the service

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Held, annulling the sub judice decision (1) The sub judice decision was not taken by a competent organ. A transfer of a medical officer from one district to another is not a matter within the competence of the Director of Dental Services as he is not the appropriate authority under section 48(2) as defined in s 2 of Law 33/67 especially when a differentiation of duties is also involved

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(2) In the circumstances of the present case no room for doubt is left that the transfer of the applicant and/or the assignment of different duties to him was illegal and that it was not effected for the purpose of satisfying the needs of the

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service but it was clearly a disciplinary sanction taken by the Director of Dental Services without affording him the opportunity to be heard

*Sub judice decision annulled.*

*Costs in favour of applicant.*

*Cases referred to*

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*Kalisperas v The Republic* 3 R S C C 146

*Pilatsis v The Republic* (1968) 3 C.L.R. 707.

*Pittakas v The Republic* (1984) 3 C.L.R. 897

### Recourse.

10 Recourse against the decision of the respondent to transfer and/or post the applicant at the outpatients section of Strovolos Hospital for four days a week and at the outpatients section of the Nicosia General Hospital for two days a week.

*A. Ladas*, for the applicant.

15 *A. Papasavvas*, Senior Counsel of the Republic, for the respondent

*Cur. adv. vult.*

20 SAVIDES J. read the following judgment. By this recourse applicant challenges the decision of the Director of Dental Services of the Ministry of Health to transfer and/or post the applicant at the outpatients section of Strovolos Hospital for four days a week and at the outpatients section of the Nicosia General Hospital for two days as from the 16th March, 1987. The sub judice decision is contained in a letter dated 6th March, 1987 signed by the Director of Dental Services which reads as follows:

25 «I wish to inform you that for the needs of the service, it has been decided that as from 16th March, 1987 you should perform the duties of your post every Monday, Wednesday, Thursday and Saturday in the outpatients section of Strovolos Hospital and every Tuesday and Friday in the outpatients  
30 section of the Nicosia General Hospital.»

The applicant is a Dentist, 1st Grade, and he was posted partly at the Nicosia General Hospital and partly at the new Government Hospital at Larnaca. By the above-mentioned letter he was transferred from Larnaca Hospital and Nicosia General Hospital to  
35 the outpatients section of Strovolos Hospital and Nicosia General Hospital.

It is the contention of the applicant that the sub judge decision was taken for punitive and revengeful reasons emanating from the fact that as a secretary of the branch of dentists of the P.A.S.Y.D.Y he came into conflict with the Director of the Dental Services, which led to two unsuccessful disciplinary proceedings against him.

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Counsel appearing for the respondent did not oppose this application and made the following statement:

«Having considered and having advised the respondent accordingly I wish to state that I shall not defend this case as I do not support the legality of the sub judge decision.»

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He produced, however, two letters of the Director of Dental Services dated 28th September, 1987 and 11th November, 1987 which were relevant to the present case to enable the Court to arrive at its decision bearing in mind all the material facts of the case.

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Counsel for the applicant submitted that from the contents of the said letters it clearly emanates that the transfer and/or new assignment of duties to the applicant was not in reality necessary in the needs of the service and was in fact a disciplinary sanction taken against him under the disguise of the «needs of the service» without affording him the opportunity to defend himself.

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From the contents of the aforesaid letters which were addressed by the Director of Dental Services to the Director-General of the Ministry of Health it clearly emanates that the transfer of the applicant from Lamaca and Nicosia General Hospital to the outpatients section of Strovolos and Nicosia General Hospital was in fact taken as a disciplinary sanction under the disguise of the needs of the service. Some extracts from the said letters are indicative of such intention. In the letter of 11th November, 1987 we read the following:

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«My decision for the slight modification of the duties of Mr. Panayiotis Stavrínides was taken under the pressure of events and his relations on the one hand with his immediate superior Mrs. Ek. Kostea, Senior Dental Officer and on the other hand with Mrs. Chr. Vassiliou, Dental Officer, 2nd Grade, who is engaged in addition to her general duties with therapy after operation. It is known that Mrs. Ek. Kostea on the one hand reported him to the Ministry for improper conduct and Dr. Pan. Eliades, Senior Medical Officer, was appointed as an

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Investigating Officer and on the other hand he was also reported by Mrs. Chr. Vassiliou to the police for assault.

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5 My first reaction to the relations created between Mr. P. Stavrínides and the aforesaid persons was to call Mr. P. Stavrínides to my office and talk the matter in an effort to find a way to settle the question of his relations with his other colleagues. The result was that Mr. Stavrínides expressed his surprise and advanced his own views on the question of his

10 relations and his service responsibilities.

It was with the above in mind that I decided to resort to the, within inverted commas in the recourse, *'due to the requirements of the service'* because in fact after consideration for months I should as Director of Dental

15 Services make the less painful for everybody corrective movement which was the slight modification of the duties of P. Stavrínides for the benefit of the service, of himself and of the others involved in matters of communication and relations having as common factor always the applicant »

20 The Director of Dental Services concluded his letter as follows:

«The future will depend upon the elimination of the negative factors of the past and the present in the sector of real cooperation and collectiveness for the correct facing of special incidents of the Dental Services.»

25 It is clear from the above that the Director of Dental Services admits that there is a modification of the duties of the applicant. It is surprising however how the Director of Dental Services describes the transfer of the applicant from Lamaca Hospital where he was partially engaged to the outpatients section of

30 Strovolos Hospital as a slight modification of his duties. A transfer of a medical officer from one district to another is not a matter within the competence of the Director of Dental Services as he is not the appropriate authority under section 48(2) as defined in s.2 of Law 33/67 especially when a differentiation of duties is also

35 involved.

In *Kalisperas v. The Republic*, 3 R.S.C.C. 146 we read the following at p. 151:

«It is, of course, possible for transfers to be made, in varying degrees, both for reasons of misconduct and other reasons at the same time. In such cases it may not always be easy to draw the line between disciplinary and other transfers. The test to be applied in such cases is to ascertain the essential nature and predominant purpose of the particular transfer. In case of doubt whether a transfer is disciplinary or not then such doubt ought to be resolved by treating the transfer in question as being disciplinary in order to afford the public officer concerned the safeguards ensured to him through the appropriate procedure applicable to disciplinary matters.»

The above was cited with approval in *Pilatsis v. The Republic* (1968) 3 C.L.R. 707 where at p. 713 we read the following:

«It seems to me that in the light of all the circumstances this is clearly a disciplinary transfer disguised as a transfer on educational grounds mainly because, due to the unwillingness of vital witnesses to testify, there was no evidence to support disciplinary measures against the Applicant. But in any case, whichever way one looks at the case, it cannot in my view be said that the question whether the transfer was disciplinary or not can in any way be considered to be free from doubt and that, therefore, it should be treated as disciplinary.»

See also *Pittakas v. Republic* (1984) 3 C.L.R. 897 at p. 902.

In the circumstances of the present case no room for doubt is left that the transfer of the applicant and/or the assignment of different duties to him was illegal and that it was not effected for the purpose of satisfying the needs of the service but it was clearly a disciplinary sanction taken by the Director of Dental Services without affording him the opportunity to be heard. Furthermore the transfer of the applicant from Larnaca to Strovolos was taken by an incompetent organ.

In the result the sub judge decision is annulled with costs in favour of the applicant.

*Sub judge decision annulled. Costs in favour of applicant.*