

1987 March 10

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ALEXANDROS KAMMITSIS,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondents.*

(Case No. 704/85).

*Public Officers—Transfers—Judicial control—Principles applicable—Summing up of.*

On 15.2.85 the respondent Commission decided to promote the applicant to the post of Senior Specialist Surgeon. The applicant accepted the relevant offer without reservation. The scheme of service for the post in question provides that its holder is in charge of a clinic or a Department of a Medical Government Institution ... On 6.6.85 the respondent Commission decided to transfer the applicant to Lamaca Hospital as from 15.7.85. Hence the present recourse.

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The applicant is a plastic surgeon. In giving evidence the Director of Medical Services told the Court that as there was no clinic of plastic surgery in the Nicosia General Hospital, and its clinic for surgery was already manned by another Senior Specialist Surgeon, the applicant had to fill the vacant post of Senior Specialist Surgeon that existed at the Lamaca Hospital

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Held, *dismissing the recourse*: (1) The principles that govern interference by this Court with transfer of civil servants may be summarised as follows, namely: (a) Every transfer, unless it is an adverse transfer, is presumed to have been taken for the benefit and exigencies of the service, (b) Appreciation of the needs of the service is the province of the administration and it is not subject to review, unless there has been an improper exercise of discretion, misconception of fact or failure to take into account a material factor, (c) Transfers are made in the context of evaluation of the wider needs of a branch of the service and review of such evaluation is virtually an impossible task and one that would render the Court the overseer of administrative action, (d) The exercise of the power must be preceded by an inquiry into all relevant facts, including the personal and family needs of the officer concerned, but such needs cannot be allowed to override an officer's commitment to service, (e) The needs of the service are the foremost consideration, (f) The recommendation of the Head of the Department should be seriously taken into account, and (g) the object of vesting the relevant power in an independent organ is twofold, that is the safeguarding of the efficiency of the

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public service and the protection of the legitimate interest of the holders of public offices

5 (2) In the circumstances of this case the respondents were right in reaching their decision that the applicant, after accepting their offer for promotion, had to fill the vacant post of Senior Specialist Surgeon in the Lamaca Hospital

*Recourse dismissed No order as to cost*

*Cases referred to*

- Nedjati v The Republic*, 2 R S C C 78,
- 10 *Sentonans v Greek Communal Chamber*, 1964 C L R 300
- Vafeadis v The Republic*, 1964 C L R 454,
- Pilatsis v The Republic* (1968) 3 C L R 707,
- Piendes v The Republic* (1969) 3 C L R 274,
- Papantoniou v The Republic* (1969) 3 C L R 460,
- 15 *Mouzounis v The Republic* (1972) 3 C L R 43,
- Matheou v The Republic* (1972) 3 C L R 304,
- Lazarou v The Republic* (1973) 3 C L R 82,
- Damianou v The Republic* (1973) 3 C L R 282,
- Karayiannis v The Republic* (1980) 3 C L R 39,
- 20 *Sofocleous v The Republic* (1982) 3 C L R 786,
- Isaias v The Republic* (1985) 3 C L R 490,
- Zachanou v The Republic* (1986) 3 C L R 969

**Recourse.**

25 Recourse against the decision to transfer applicant from Nicosia General Hospital to Larnaca Hospital

*N. Papaefstathiou*, for the applicant.

*P. HadjiDemetriou*, for the respondents.

*Cur adv. vult*

DEMETRIADES J. read the following judgment. The applicant, who is a doctor, is a member of the medical staff of the Ministry of Health. After completing his studies and his specialization in general surgery, he was sent, on a Government scholarship, to England, to specialise in plastic surgery. When he returned, he was posted as the Nicosia General Hospital and since then, that is 1973, he was entrusted with the carrying out of plastic operations. It is his version that he has never, since then, carried out any other kind of surgery. 5

On the 15th February, 1985, the respondents decided to promote the applicant to the post of Senior Specialist Surgeon, which is a promotion post in the medical services of the Republic. An offer was made to him to that effect and he accepted it without reservations. 10

The scheme of service of this post provides, inter alia - 15  
«Καθήκοντα και Ευθύναι:

(α) Προϊσταται Κλινικής ή Τμήματος Κυβερνητικού Ιατρικού Ιδρύματος και είναι υπεύθυνος δια την ομαλήν και αποτελεσματικήν λειτουργίαν της μονάδος της οποίας προϊσταται. 20

(β) Υποβάλλει εκθέσεις, στοιχεία και εισηγήσεις επί θεμάτων αφορώντων εις την λειτουργίαν και τας εργασίας της μονάδος της οποίας προϊσταται.

(γ) Προγραμματίζει ή/και συμμετέχει εις την εκπαίδευσιν ιατρικού, νοσηλευτικού και παραϊατρικού προσωπικού. 25

(δ) Ασκει ιατρικά καθήκοντα της ειδικότητός του και καθοδηγεί το υπ' αυτόν προσωπικόν εις την άσκησιν των καθηκόντων του.

(ε) Εκτελεί οιαδήποτε άλλα καθήκοντα τα οποία ήθελον ανατεθή εις αυτόν.» 30

(«Duties and Responsibilities:

(a) He is in charge of a Clinic or a Department of a Medical Government Institution and is responsible for the smooth and effective running of the unit which he directs. 35

(b) Submits reports, material and suggestions on matters

relating to the functioning and the work of the unit which he directs.

(c) Programs and/or participates in the training of medical, nursing and paramedical staff.

5 (d) Exercises medical duties of his specialization and guides his subordinate staff in the exercise of its duties.

(e) Performs any other duties that may be assigned to him. »).

10 Previously the applicant was holding the post of Specialist Surgeon.

On the 6th June, 1985, and after a submission by the Director-General of the Ministry of Health, which was made on the recommendation of the Director of Medical Services, the respondents decided to transfer the applicant to the Lamaca Hospital as from the 15th July, 1985. The decision of the respondents was communicated to the applicant by letter dated the 27th June, 1985.

20 It is the complaint of the applicant that as he is the only plastic surgeon in the Medical Services of the Republic and he has not since 1973, carried out any general surgery, he ought to continue to be posted at the Nicosia General Hospital as the majority of the patients requiring his services live in the District of Nicosia.

25 The case for the respondents was given by Dr. A. Markides, the Director of Medical Services. In giving evidence, Dr. Markides acknowledged the qualities and capabilities of the applicant as a plastic surgeon but he said that after the latter's promotion and as there was no clinic for plastic surgery in the Nicosia General Hospital and its clinic for surgery was already manned by another Senior Specialist Surgeon, the applicant had to fill the vacant post of Senior Specialist Surgeon that existed at the Lamaca Hospital.

30 In his opinion, and very rightly so, there can be no two people managing the Surgical clinic of the Nicosia Hospital. In view of this, it was his opinion that as the post of Senior Specialist in Surgery at the Lamaca Hospital was vacant, the applicant had to be transferred there to fill it. In his opinion the applicant can offer his specialised services at the Nicosia General Hospital if and when other Senior Specialists require his services.

Aggrieved by the sub judge decision the applicant filed the present recourse by which he prays for its annulment. The grounds

of law, as these appear in the address of his counsel, on which this recourse is based, are the following:

- (a) That the sub judge decision was taken without due inquiry.
- (b) It is the result of a misconception of facts.
- (c) It was taken in breach of the law or misconception of law, and 5
- (d) It was taken contrary to the real necessities and the interest of the service.

The principles that govern interference by this Court in transfers of civil servants have been expounded in a great number of cases and these can be summarised as follows: 10

(a) Every transfer, unless it is an adverse transfer, is presumed to have been taken for the benefit and the exigencies of the service.

(b) Appreciation of the needs of the public service and departments of it and choice of the means to satisfy them are matters falling within the exclusive competence of the administration not in themselves subject to review, except where there exists improper use of the relevant discretionary power or misconception concerning the factual situation or failure to take into account a material factor. 15

(c) Transfers are made in the context of evaluation of the wider needs of a branch of the service. Review of such evaluation would require the Court in every case to examine how each branch of the department is staffed, virtually an impossible task and one that would in effect render the Courts the overseer of administrative action. Whereas their role is confined to the scrutiny of the legality of administrative action. Examination of the needs of the service on such wide ranging basis would deprive the administration of the flexibility necessary to respond to the ever changing needs of the service. 20 25

(d) The exercise of the power must be preceded by the necessary inquiry into the facts relevant to its exercise and that includes, in the case of transfers, examination of the personal and family needs of the officer under transfer. On the other hand, neither personal nor family circumstances can be allowed to override an officer's commitment to the service. 30 35

(e) The needs of the service are the foremost consideration in the positioning and transfer of personnel.

(f) In exercising its power of transfer the Commission should always take seriously into consideration the recommendations of the Head of the Department or other Senior responsible officer so that the functions of a public office should be performed in the  
 5 general interest of the public by the public officer best suited to perform such duties.

(g) The object of vesting the power of transfers into an independent organ, such as the Public Service Commission, is twofold: First the safeguarding of the efficiency and proper  
 10 functioning of the public service of the Republic and, secondly, the protection of the legitimate interest of the individual holders of public offices (see, in this respect, *Nedjati v. The Republic*, 2 R.S.C.C. 78, *Sentonaris v. The Greek Communal Chamber*, 1964 C.L.R.300, *Vafeadis v. The Republic*, 1964 C.L.R.454, *Pilatsis v. The Republic*, (1968) 3 C.L.R. 707, *Pierides v. The Republic*, (1969) 3 C.L.R. 274, *Papantoniou v. The Republic*, (1969) 3 C.L.R. 460, *Mouzouris v. The Republic*, (1972) 3 C.L.R. 43, *Matheou v. The Republic*, (1972) 3 C.L.R. 304, *Lazarou v. The Republic*, (1973) 3 C.L.R. 82, *Damianou v. The Republic*, (1973)  
 20 3 C.L.R. 282, *Carayiannis v. The Republic*, (1980) 3 C.L.R. 39, *Sofocleous v. The Republic*, (1982) 3 C.L.R. 786, *Isaias v. The Republic*, (1985) 3 C.L.R. 490, and *Zachariou v. The Republic*, unreported yet, judgment given on the 21st June, 1986, in Recourse No. 639/85)\*.

25 Having summarised the position as regards the power of the administration to transfer civil servants from one place to another, I shall now very briefly answer the submissions of the applicant on the grounds of law on which he bases his case. I feel that all four grounds can be answered together.

30 It is the complaint of the applicant that although he put forward to the respondents particulars and facts which were supported by the contents of letters addressed by him and by Senior Specialists in charge of clinics of the Nicosia General Hospital (i.e. neurosurgery, paediatric, general surgery and orthopaedic) to the  
 35 Director of Medical Services, in which they emphasised the need of his presence at this particular Hospital, no inquiry was carried out by the respondents with regard to their contents. This was not done, the applicant submitted, because the respondents had already decided to transfer him to Lamaca in view of his  
 40 promotion.

\* Reported in (1966) 3 C.L.R. 969.

All the above documents were before the respondents who, in reaching the sub judice decision, as it appears from the minutes of their meeting, did take them into consideration.

The simple answer to the applicant's complaint can be answered shortly as follows:

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The medical services of the Republic do not have a post of a specialist plastic surgeon, nor a clinic or department in the service exists. The duties and responsibilities of the post of Senior Specialist Surgeon are clearly defined and described in the relevant scheme of service of the post. The applicant accepted the offer of his promotion to the post without reservations, well knowing the duties and responsibilities of the post. The surgical clinic of the Nicosia General Hospital is already manned by another Senior Specialist Surgeon, who is senior to the applicant.

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In the circumstances, I feel that the respondents were right in reaching their decision that the applicant, after accepting their offer, had to fill the vacant post of Senior Specialist Surgeon that existed in the Lamaca Hospital.

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In the light of my findings, I dismiss the recourse but, in the circumstances, I make no order as to costs.

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*Recourse dismissed  
No order as to costs.*