

1988 October 6

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS ELIADES,

Applicant,

v.

- 1. THE PUBLIC SERVICE COMMISSION,
- 2. THE MINISTER OF FINANCE,
- 3. THE ATTORNEY-GENERAL OF THE REPUBLIC,

Respondents.

(Case No. 59/86).

Public Officers—Emplacement in the Public Service by virtue of Law 44/85, section 42(1)—The Commission should have before it the complete picture and status of former employees of the Land Consolidation Authority (abolished by said law)

Due inquiry—Lack of, into material facts—Ground of annulment.

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Law 44/85 abolished the Land Consolidation Authority and substituted by the Department of Land Consolidation. Section 42(1)* made provision for safeguarding the employees of the Authority. It provided that every such employee will come in the service of the Republic and will be emplaced by the appropriate Authority of the Republic in a post the status and functions of which will be comparable to the functions of the post held in the service of the Authority.

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The Public Service Commission, as the appropriate organ, emplaced applicant as Accounting Officer, 1st Grade with salary scales A8 and A9.

* Quoted at pp. 1848 - 1849 post.

By means of this recourse applicant seeks: (a) The annulment of such emplacement and (b) Declaration that he should have been emplaced in scale A10 - A11 + 2.

5 The Public Administration and Personnel Department, wherefrom the submission for applicant's emplacement to the sub judge post originated, compared the scheme of service of the applicant with the abolished authority with that of the sub judge post, but what it did was not evaluation, but harmonization.

The respondent Commission did not conduct an inquiry of its own.

10 Held, annulling the sub judge decision: (1) In taking its decision under section 42 (1) the Commission ought to have before it all the material consideration which make up the complete picture of the status and functions which the applicant was carrying in the service of the Land Consolidation Authority. It follows that the sub judge decision must be annulled.

15 2) It has to be, also, annulled on the general ground of Administrative Law, that of lack of due inquiry; that it was reached as a result of defective exercise of discretionary powers due to lack of sufficient inquiry into material facts and lacking due reasoning.

20 3) It is not for this Court to decide the post in the Public Service into which the applicant ought to have been emplaced and therefore prayer (e) must fail.

Sub judge decision annulled.

Prayer (e) dismissed. No order as to costs.

Cases referred to:

25 *Republic v. Gava* (1968) 3 C.L.R. 322;

Tourpeki v. The Republic (1973) 3 C.L.R. 592;

Iordanou v. The Republic (1967) 3 C.L.R. 245;

Mytides and Another v. The Republic (1983) 3 C.L.R. 1096.

Recourse.

Recourse against the decision of the respondents to emplace applicant to the post of Accounting Officer, 1st Grade, in the Treasury Department on salary scale A8 and A9 with effect from 1st August, 1985.

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P. Angelides, for the applicant.

St. Theodoulou, for the respondents.

Cur. adv. vult.

STYLIANIDES J. read the following judgment. The applicant was the Accounting Officer of the Land Consolidation Authority.

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By Law 44/85 the Authority was abolished and substituted by the Department of Land Consolidation.

In order to secure and safeguard the position of the employees of the Authority, provision was made in section 42. Section 42(1) reads as follows:

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"42. - (1) Παν πρόσωπον το οποίο αμέσως προ της ημερομηνίας ενάρξεως της ισχύος του παρόντος τροποποιητικού Νόμου ετέλει εις την υπηρεσίαν της Αρχής ως μέλος του προσωπικού αυτής υπάγεται, από της ημερομηνίας ταύτης εις την υπηρεσίαν της Δημοκρατίας και τοποθετείται υπό της αρμοδίας αρχής της Δημοκρατίας, ανεξαρτήτως οιασδήποτε διατάξεως οιασδήποτε ετέρου νόμου, εις θέσιν ήτις θα περιλαμβάνεται εις τον Τακτικόν Προϋπολογισμόν του Τμήματος και διά δε το εναλλάξιμο και λογιστικό προσωπικό της Αρχής εις θέσιν, ήτις θα περιλαμβάνεται εις τον Τακτικόν Προϋπολογισμόν της Δημοκρατίας, το καθεστώς και αι λειτουργίαι της οποίας θα είναι ανάλογοι προς τας λειτουργίας της κατεχομένης θέσεως εις την υπηρεσίαν της Αρχής και θα λαμβάνη την αντιμισθίαν αυτού παρά της Δημοκρατίας."

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"42. - (1) Every person who immediately before the date of the coming into operation of this amending Law was in the service of the Authority as a member of its personnel he comes, as from that date, in the service of the Republic and is
5 emplaced by the appropriate Authority of the Republic, notwithstanding any other provision in any other law, in a post which shall be included in the Budget of the Department, and the interchangeable and accounting staff of the Authority in a post which will be included in the Ordinary Budget of the Republic, the status and functions of which will be comparable to
10 the functions of the post held in the service of the Authority and he will be paid his salary by the Republic."

That Law came into operation on 24th May, 1985.

On 8th November, 1985, the Supplementary Budget Law, (No.39) of 1985, (Law No. 140/85), was enacted. By means of
15 section 4 thereof - first schedule - a new post of Accounting Officer, 1st Grade, with salary scales A8 and A9, for the emplace- ment of the holder of the permanent post of the Accounting Officer of the former Land Consolidation Authority in accordance
20 with Law 44/85, was created. The creation of such post was made pursuant to a relevant submission of the Department of Public Administration and Personnel of the Ministry of Finance.

After the enactment of Law 140/85 the Public Service Commission decided to emplace applicant in that post - Accounting
25 Officer, 1st Grade - in the Treasury Department, on the salary scales A8 and A9, with effect 1st August, 1985. The applicant was notified accordingly. This is the sub judice decision which is challenged by this recourse, whereby the applicant prays:

"(a) Declaration of the Court that the sub judice decision of
30 the Respondent No. 1, dated 2nd January, 1986, is null and void and/or illegal and/or of no legal effect.

(b) Declaration of the Court that applicant should have been emplaced in scales A10 - A11 + 2 and not in any other scale."

Applicant's counsel submitted that the appropriate Authority, which admittedly under section 42(1) of Law 44/85 is the Public Service Commission, was bound to conduct an inquiry in order to find out the status and the functions of the post held by the applicant in the former Land Consolidation Authority and not simply to act upon the decision taken by another organ of the Republic, i.e. The Ministry of Finance.

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Diomedes Avraam, a Public Officer in the Public Administration and Personnel Department, gave oral testimony in the course of the hearing of this recourse. He stated that it was his Department which made the submission to the Council of Ministers of the emplacement of the applicant on the sub judice scale. They compared the scheme of service of the post of Accounting Officer, 1st Grade, in the Treasury Department with the scheme of service held by the applicant in the Consolidation Authority. He characteristically said:

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"What I did was not evaluation, it was harmonization - (εκείνο το οποίο έκαμα δεν ήταν αξιολόγηση, ήταν εναρμόνιση.)"

He did neither obtain, nor seek information regarding the extent and nature of the duties actually performed by the applicant.

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The reasoning of the decision of the appropriate Authority - The Public Service Commission - to emplace applicant in the post of Accounting Officer, 1st Grade, is set out in their letter of 25th November, 1985, addressed to counsel for the applicant.

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The Public Service Commission refers to section 41(1) of Law 44/85, to the provision of Law 140/85, afore quoted, and proceeds as follows:

"As you are aware the holder of the above mentioned post in the former Land Consolidation Authority is Mr. Eliades and therefore the Public Service Commission has the duty to apply the law, by emplacing your client in the newly created post of Accounting Officer, 1st Grade."

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The Public Service Commission had made no inquiry, whatsoever; to find out the status, the functions and duties of the applicant in the Land Consolidation Authority:

5 With regard to the Public Administration and Personnel Department, I have already referred to the comparison of the scheme of service made by the Public Administration and Personnel Department.

10 Has such failure of the appropriate Authority - the Public Service Commission - any effect, having regard to the provisions of section 42(1) of Law 44/85?

15 In *Republic (Public Service Commission) v. Kika Gava* (1968) 3 C.L.R. 322 (F.B.), the issue was the emplacement under section 16(1) of the Transfer of the Exercise of the Competences of the Greek Communal Chamber and the Ministry of Education Law, 1965 (Law No. 12 of 1965). Section 16(1) of Law 12/65 provided that any person in the service of the Chamber shall be transferred to the service of the Republic and be thereafter placed by the appropriate Authority of the Republic therein, as far as practicable in a post whose functions are comparable to the
20 functions of the post held in the service of the Chamber.

At pp. 324-325 it was said:

25 "We take the view that such decision was reached without the Commission having before it all the material considerations which make up the complete picture of the duties which the Respondent was carrying out in the service of the Greek Communal Chamber. It is now up to the Commission to reconsider the matter of the emplacement of the Respondent, in the exercise of its relevant powers under section 16(1)..., and in the light of all relevant considerations, including the material
30 which was placed before the trial Court at the hearing of the recourse.

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Once the Public Service Commission had taken a decision in the matter, in the exercise of its discretionary powers, under the said section 16(1), it was not open to the trial Court to find that there existed on the part of the Commission an omission; nor was it open to such Court to decide, instead of the Commission, what was the post in the public service to which the Applicant ought to have been emplaced, and to make a declaration accordingly."

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From the above pronouncement it is plain that the appropriate Authority - the Public Service Commission - in taking the decision under section 42(1), in the present case, ought to have before it all material considerations which make up the complete picture of the status and functions which the applicant was carrying in the service of the Land Consolidation Authority.

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The Commission did not have such material considerations before it and did not carry out an inquiry to find them out.

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The sub judice decision must be annulled, as it was taken in a manner contrary to the explicit provision of section 42(1) of Law 14/85.

It has to be, also, annulled on the general ground in Administrative Law of lack of due inquiry; that it was reached as a result of defective exercise of discretionary powers due to lack of sufficient inquiry into material facts and lacking due reasoning - (*Vasio Tourpeki v. Republic (Public Service Commission)* (1973) 3 C.L.R. 592; *Iordanis G. Iordanou v. Republic (Public Service Commission)* (1967) 3 C.L.R. 245 and *Mytides and Another v. Republic* (1983) 3 C.L.R. 1096).

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Prayer (a) will succeed.

With regard to prayer (b), it is not for this Court to decide the post in the Public Service into which the applicant ought to have been emplaced and, therefore, it must fail.

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After the annulment of the sub judge decision the Respondent Commission, as was said in *Gava* case by the Full Bench, has to reconsider the matter, after carrying out inquiry in the light of the statutory provisions of section 42(1) and in the light of all relevant considerations.

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Sub judge decision is hereby declared null and void and of no effect under Article 146.4(b).

Let there be no order as to costs.

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

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