

1967
May 30

[VASSILIADES, P., JOSEPHIDES, LOIZOU, HADJIANASTASSIOU JJ.]

A. CHRISTODOU-
LIDES
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

A. CHRISTODOULIDES,

Appellant.

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(*Revisional Jurisdiction Appeal No. 25*)

Public Officers—Cyprus Telecommunications Authority (CYTA)—Appointments and Promotions—Filling the post of Telegraph Supervisor—Appeal—Trial Court's dismissal of Appellant's recourse against Respondent's relative decision to appoint (or promote) interested party C. to the post of telegraph supervisor in preference to, and instead of, him—Such dismissal based on the grounds that the Respondent Commission must be deemed to have been properly constituted and to have acted with sufficient quorum at the material time in view of section 5 of the Public Service Commission (Temporary Provisions) Law, 1965, (Law No. 72 of 1965)—That the Interested Party fulfilled the qualifications laid down by the relevant schemes of service—And that it was reasonably open in this case to the Respondent Commission to make the appointment (or promotion) complained of and, thus, it did not act in excess or abuse of powers—Decision of the trial Court upheld by the Supreme Court on appeal.

Administrative Law—See under Public Officers above. See, also, herebelow.

Appointments—Promotions—See above.

Promotions—Appointments of public officers—See above.

Public Service Commission—Constitution and Quorum—Defects in—The Public Service Commission (Temporary Provisions) Law, 1965, (Law No. 72 of 1965, enacted on the 16th December, 1965)—Section 5 thereof—Section 5 curing, under certain conditions, defects in the constitution and quorum of the Public Service Commission in respect of decisions taken by it between the 19th December, 1963, and the enactment of the Law, i.e. the 16th December, 1965—Effect of section 5 on pending proceedings on a recourse under Article 146 of the Constitution—Provided the recourse

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was filed and the defect expressly raised as a ground of invalidity before the enactment of that Law, section 5 will not affect the proceedings—Otherwise section 5 will be applicable as in the present case—See, also, under Constitutional Law, below.

Constitutional Law—Separation of powers—Article 146 of the Constitution—Ex post facto legislation—If the effect of the said section 5 of Law No. 72 of 1965 (supra) was to validate ex post facto a defective decision, already subject-matter of a recourse under Article 146 on the express ground of such defect in the constitution or quorum of the Commission as aforesaid (supra), that would amount, in effect, to interfering with the constitutionally safeguarded right of recourse under Article 146 of the Constitution—See, also, under Public Service Commission, above.

Recourse under Article 146 of the Constitution—The effect on such a recourse of a legislation purporting to validate ex post facto defective decisions of the administration—See above under Public Service Commission; Constitutional Law.

Retrospective legislation—Ex post facto legislation—See above.

Ex post facto legislation—See above under Public Service Commission; Constitutional Law.

Certificate—Certificate issued by a school of secondary education long before the question of its essential validity was put in issue—The Court will not enter into the matter of such validity.

Secondary Education—Certificate of studies—See immediately above.

The Appellant in this case filed on the 5th April, 1965, a recourse under Article 146 of the Constitution, complaining that the Respondent Public Service Commission, acting in abuse of powers, promoted the interested party Kakomanolis to the post of Telegraph Supervisor in preference to him. The recourse was heard and dismissed by a single Judge of this Court (see (1966) 3 C.L.R. 862) and the Appellant filed the present appeal which was argued on three grounds:

The first ground was that the trial Judge erroneously came to the conclusion that the Public Service Commission (Temporary Provisions) Law, 1965, (Law No. 72 of 1965), which by section 5 validated decisions taken by the said Commission with a defective constitution and/or quorum, applied to the present case and that, therefore, the decision complained of, admittedly taken by the Commission at a time when it was

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not properly constituted and with a defective quorum, had been so validated. It is to be noted that the present recourse was filed on the 5th April, 1965, and Law No. 72 of 1965 (*supra*) was enacted on the 16th December, 1965. But the point with regard to the defective constitution and quorum of the Respondent Commission was taken for the first time—by way of an additional point of law—five-and-a-half months later *i.e.* on the 31st May, 1966.

The remaining two grounds of appeal were to the effect that the trial Judge erroneously came to the conclusion: (1) that the interested party fulfilled the qualifications laid down in the schemes of service for appointment to the post of telegraph supervisor, with regard to being a graduate of a recognised secondary school; (2) that on the evidence it was reasonably open to the Respondent Commission to promote the interested party in preference to, and instead of, the Appellant.

Sections 5 of Law No. 72 of 1965 (*supra*) cured, under certain conditions, the defects in the constitution and quorum of the Public Service Commission in respect of decisions taken by it between the 19th December, 1963, and the enactment of that Law *i.e.* the 16th December, 1965, the said decision having been, thus, validated

The Court in dismissing the appeal on all grounds:

Held, with regard to the first ground (supra):

(1) In the present case the recourse was filed on the 5th April, 1965, Law No. 72 of 1965 (*supra*) was enacted on the 16th December, 1965, and the point with regard to the defect in the quorum and the constitution of the Respondent Public Service Commission was taken, *for the first time*, five-and-a-half months later, namely on the 31st May, 1966.

(2) Adopting the reasoning and the conclusion reached in the case of *Theofylactou and The Republic*, (1966) 3 C.L.R. 801, we are of the view that a point with regard to the quorum of the Public Service Commission as well as to a defect in its constitution, which was taken for the first time after the enactment of the said Law No. 72 of 1965 (*supra*), was not valid and the Applicant in a recourse under Article 146 of the Constitution could not rely on.

(3) A different result would be reached in cases where not only the recourse was filed before the enactment of the aforesaid

Law No. 72 of 1965 (*supra*), but, also, the defect in the quorum or the constitution of the Commission, which section 5 of the Law purports to remedy, had been expressly raised as a ground of invalidity of the decision complained of before such enactment. Otherwise *i.e.* if the effect of section 5 (*supra*) was to validate *ex post facto* a defective decision already objected to on the ground of such defects by means of a recourse under Article 146 of the Constitution, that would lead to an unconstitutionality because it would amount, in effect, to interfering with the constitutionally safeguarded right of recourse under Article 146 of the Constitution. (*Reasoning and conclusion in Theofylactou's case (supra) adopted; reasoning in the following decisions of the Greek Council of State adopted: Nos. 737/1954, 758/1954 783/1954, 785/1954, 1670/1954 and 98/1956.*)

Held, with regard to the remaining grounds of appeal (supra):

(1) (a) The Appellant's complaint as to the qualifications of the interested party was that the Respondent Commission relied on a certificate from the Samuel School (a school of secondary education) which stated that the interested party had attended the classes of the school and had passed successfully the examinations. In fact, the interested party was away during the last two school-years in Haifa, but there was evidence from the Headmaster of the School to the effect that he used to send to the Appellant the lessons and papers and, relying on the answers given to the examination papers, the school eventually issued to the interested party the certificate which was produced as an exhibit in this case.

(b) The learned trial Judge was of the view that it was not within the province of the Court to examine the essential validity of that certificate, and that, once this certificate had been issued (in 1947) long before the question of its validity was put in issue in connection with these proceedings, it was not within the province of the Court to re-open and determine such matter.

(c) We agree with these reasons: therefore, the second ground of appeal should also fail.

(2) The learned trial Judge gave his reasons in reaching his conclusions that it was reasonably open to the Commission to make the promotion complained of, and that the Commission did not act in excess or abuse of powers. Agreeing, as we do, with his reasoning we are of the view that this third ground of appeal should also fail.

Appeal dismissed with costs.

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Cases referred to

Theofylactou and the Republic (1966) 3 C L R 801,

Constantinou and Others (1966) 3 C L R 862,

Decisions of the Greek Council of State

Nos 737/1954, 758/1954, 783/1954, 785/1954, 1670/1954 and
98/1956

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Triantafyllides J.) given on the 24 12 66, (Revisional Jurisdiction Case No. 70/65) dismissing Appellant's recourse against the validity of a decision of the Respondent to appoint, by way of promotion, to the post of Telegraph Supervisor, in the service of the Cyprus Telecommunications Authority (CYTA), the Interested Parties C. Antoniou and H Kakomanolis

Mrs. Eleni Vrahimi, for the Appellant.

M Spanos, Counsel of the Republic, for the Respondent

The Judgment of the Court was delivered by:-

JOSEPHIDES, J The Appellant in this case filed originally a recourse under the provisions of Article 146 of the Constitution, complaining that the Public Service Commission, acting in abuse of powers, promoted the interested party Kakomanolis in preference to him The recourse was heard and dismissed by a Single Judge of this Court,* and the Appellant filed the present appeal which was argued before us on three grounds

The first ground was that the trial Judge erroneously came to the conclusion that the Public Service Commission was properly constituted and/or that there was a proper quorum at the time when the appointments and/or promotions of the interested parties took place by the Respondent

In fact, three recourses were heard together and, originally, there were two interested parties, but at the hearing of the appeal the Appellant pressed his appeal only as regards the interested party Kakomanolis

The recourse was filed on the 5th April, 1965, and Law 72 of 1965, which validated decisions taken by the Commission with a defective constitution, was enacted on the 16th December,

*Vide *Constantinou and Others* and *The Republic* (1966) 3 C L R 862

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1965. Some five-and-a-half months later, on the 31st May, 1966, after the hearing of the recourse had begun, the point with regard to the defective constitution of the Commission was taken for the first time by the Appellant. It was by way of an additional point of law to the effect that "at the time of the administrative act complained of, *i.e.* on the 11th February, 1965, the Public Service Commission was not properly constituted and there existed no quorum in accordance with Article 123 of the Constitution". It was, therefore, argued that the subsequent enactment of Law 72 of 1965 could not affect the position inasmuch as the original administrative act was void *ab initio* and also *sub judice*. The same point was argued before us today. The learned trial Judge in considering this point had this to say:

"In the circumstances, and for the reasons given in the Judgment of this Court in *Theofylactou* and *The Republic*"—now reported in (1966) 3 C.L.R. 801—in relation, there, to a belated objection regarding the quorum of the Public Service Commission—"I hold that the objection regarding the constitution of the Commission cannot succeed, as and when taken in the present proceedings".

What was decided in *Theofylactou's* case was that a point with regard to the quorum of the Public Service Commission, which was taken after the enactment of Law 72 of 1965, was not valid and the Applicant could not rely on it.

The learned trial Judge (at page 810 of the same Report) decided also the question with regard to the defect in the constitution of the Commission at the time of the making of the act. He said :

"I am of the opinion that no different result can be reached with regard to the application of section 5 of Law 72/65 to a recourse, such as the present, where Judgment had not yet been reserved, when section 5 was enacted, but which has been filed before its enactment and at the time of filing of which the defect in the constitution of the Commission, which section 5 purports to remedy, had been expressly raised as a ground of invalidity of the sub judice decision".

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The reasons given for that decision by the learned Judge were that if the effect of section 5 was to validate *ex post facto* a defective decision that would lead to an unconstitutionality because it would amount, in effect, to interfering with the constitutionally safeguarded right of recourse under Article 146 of the Constitution: The following decisions of the Greek Council of State were relied upon: Nos. 737/1954, 758/1954, 783/1954, 785/1954, 1670/1954 and 98/1956. We may say that we are in full agreement with that reasoning and the conclusion reached.

In the present case, as already stated, the recourse was filed on the 5th April, 1965, Law 72 of 1965 was enacted on the 16th December, 1965, and the point with regard to the constitution of the Public Service Commission was taken, for the first time, five-and-a-half months later, namely, on the 31st May, 1966.

For these reasons we are of the view that the first ground of the appeal cannot succeed.

We shall deal briefly with the remaining two grounds. The second ground was that the trial Judge erroneously came to the conclusion that the interested party Kakomanolis fulfilled the qualifications laid down in the schemes of service for appointment to the post of telegraph supervisor, with regard to being a graduate of a recognized secondary school.

The Appellant's complaint was that the Public Service Commission relied on a certificate from the Samuel School which stated that the interested party had attended the classes of the school and had passed successfully the examinations. In fact, the interested party was away during the last two years at Haifa, but there was evidence from the headmaster of the school to the effect that he used to send to the Appellant the lessons and papers and, relying on the answers given to the examination papers, the school eventually issued to him the certificate which was produced as an *exhibit* in this case.

The learned trial Judge was of the view that it was not within the province of the Court to examine the essential validity of that certificate and that, once the certificate had been issued (in 1947) long before the question of its validity was put in issue in connection with these proceedings, it was not within the province of the Court to re-open and determine such matter.

For these reasons we are of the view that the second ground of appeal should also fail

The final ground was that the Court erroneously came to the conclusion that, having regard to the totality of the evidence adduced in the case and the matters which were before the Respondent at the material time, it was reasonably open to the Commission to promote interested parties Kakomanolis and Antoniou in preference to, and instead of, the Appellant. The learned trial Judge gave his reasons in reaching his conclusion that it was reasonably open to the Commission to make the aforesaid promotions, and that the Commission did not act in excess or abuse of powers and, agreeing, as we do, with his reasoning, we are of the view that this ground of appeal should also fail.

For these reasons the appeal is dismissed with costs.

Appeal dismissed with costs.

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