

1988 October 22

[PAPADOPOULOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IOANNA PANAYIOTOU HADJICHARALAMBOUS,

*Applicant.*

THE REPUBLIC OF CYPRUS, THROUGH  
1. THE EDUCATIONAL SERVICE COMMISSION,  
2. THE MINISTRY OF EDUCATION,

*Respondents.*

(Case No: 920/85).

*Educational Officers—Appointments—Temporary appointments—Decision by Council of Ministers to renew appointments of those who had been working on contractual basis with the Ministry prior to 1984-1985—Educational Service Commission adopted such decision—Annulment of such decision on grounds expounded in Kyriakidou v. The Republic (1986) 3 C.L.R. 913.*

The facts of this case appear sufficiently in the Judgment of the Court.

*Sub judice decision annulled.*

*No order as to costs.*

10 *Cases referred to:*

*Kyriakidou v. The Republic (1986) 3 C.L.R. 913.*

**Recourse.**

Recourse against the decision of the respondents to appoint on contract for the years 1985-1986 the interested parties to the post

of Instructress in Goldsmithing and Silversmithing in preference and instead of the applicant.

*A. Angelides*, for the applicant.

*R. Petridou (Mrs.)*, for the respondents.

*Cur. adv. vult.* 5

PAPADOPOULOS J. read the following judgment. By the present recourse the applicant seeks:

(a) A declaration of the Court that the refusal and/or omission of the respondents to appoint her on contract to the post of Instructress in Goldsmithing and Silversmithing is null and void and of no effect whatsoever and that what was omitted ought to be done. 10

(b) A declaration of the Court that the act and/or decision of the respondents No. 1 to appoint on contract interested party for the years 1985-1986 instead of herself, is null and void and of no effect whatsoever, 15

(c) A declaration of the Court that the omission of the respondents to reinstate and/or appoint on contract the applicant and/or to comply with the decisions of the Supreme Court to the recourses 412/80 and 384/81 is contrary to Law. 20

The facts of the case are as follows:

The applicant between the years 1964-1973, did at first her apprenticeship and then worked as goldsmith, silversmith, at the work-shop of Mr. Constantinides in Nicosia, and between the years 1973-1976 she worked on her own. From September 1966 to June 1970 she attended a cycle of lessons of the apprenticeship Scheme organized by the Ministry of Labour and Social Insurance and upon its successful completion she was awarded a certificate of specialization in silversmithing/goldsmithing. 25

The applicant was appointed on a special contract to the post of 30

instructress in goldsmithing/silversmithing at the Technical School of Nicosia for eight periods per week as from the 6th October 1976 and at the Professional School Larnaca with ten periods per week as from the 28th February 1977. This special contract of the applicant was renewed successively for full engagement as from 3rd October 1977 to the 31st August 1978, from 19th October to 31st July 1979, and from 2nd October 1979 till 31st August 1980.

In August 1985 the Council of Ministers decided to renew the engagement of teachers who had been working with the Ministry on contractual basis prior to the years 1984-1985. This decision was communicated to the Public Service Commission with the suggestion to give effect to it. The Educational Service Commission proceeded to the appointment of a number of persons. Among them in the post of goldsmithing and silversmithing instructress, they appointed the interested party and not the applicant. The decision of the Educational Service Commission regarding these appointments, following the suggestion of the Ministerial Council, has been declared null and void in a number of other recourses by other applicants. With all respect, I can add nothing useful to the judgment of Justice Piki in the case of *Kyriakidou v. The Republic* (1986) 3 C.L.R. 913, at pp. 917, 918, 919, which I adopt. He had this to say about the sub judice decision of the Ministerial Council which affected the applicant in that recourse but which decision was in consequence of the same state of events.

"The Council of Ministers decided on 2.8.85 to renew the appointment for the ensuing school year of educationalists who were contractually employed in the educational service prior to the school year 1984-85. The decision was passed on to the Educational Service Commission by the Ministry, coupled with a suggestion to give effect to it. Study of the events preceding and surrounding the decision leaves no doubt that in taking the sub judice decision the respondents did no more than give effect to the decision of the Council of Ministers. They appointed everyone covered by the decision of the Council of Ministers. They relinquished in effect the exercise of the

discretionary powers vested them by law (Law 10/69), making them the sole vestees of the power to appoint teachers in the public educational service ..... The sole reason for departing therefrom (the regulations) appeared to be the recommendations of the Ministry of Education. And this is, as earlier noted, an additional reason for annulling their decision. Every administrative Authority vested with the exercise of discretionary powers must, as a condition of the validity of its decision, themselves assume the exercise of the power and exercise it effectively by reference to the criteria set out in the law and the principles of sound administration. Subordination of the exercise of their power, as it happened in this case, necessarily invalidates their decision for it is not a decision emanating from the organ specified by law. And as such, it is vulnerable to be set aside for both abuse of power, as well as excess of power. The law did not entrust either the Council of Ministers or the Ministry of Education with the appointment of teachers in the Public Educational Service. The power vested solely and exclusively in the Educational Service Commission. Invalidity is the inevitable consequence attending abdication or surrender of administrative discretion. This is made abundantly clear by the numerous decisions of the Supreme Court. Specific reference need only be made to a decision of the Full Bench, that in *Papakyriacou v. Republic*, bearing direct relevance to the facts of the present case. In that case as well, the respondents disregarded tables of priority in order to give effect to a decision of the Council of Ministers. The decision was declared invalid for exceeding their powers. The Court noted that respondents instead of holding an inquiry into the suitability of candidates in accordance with statutory criteria, they confined their task to approving the decision of the Council of Ministers; as indeed they appeared to have done in this case. The fate of the decision here under review, cannot be any different.

For the reasons given above, the decision is annulled."

For the above stated reasons, the sub judice decision is annulled and there will be no order as to costs.

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