

[TRIANTAFYLIDIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

KIRIAKI TIKIROU,

Applicant.

and

PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 89/68).

1968
Sept. 3
—
KIRIAKI
TIKIROU
v.
THE PUBLIC
SERVICE
COMMISSION

Administrative and Constitutional Law—Practice—Recourse under Article 146 of the Constitution—Misdescription in the motion for relief of the appointment of Interested Party challenged by this recourse—Misdescription, due to a clerical error, allowed to be amended, under rule 19 of the Supreme Constitutional Court Rules, 1962—Amendment not barred in the circumstances by the provisions of paragraph 3 of Article 146 of the Constitution.

Recourse under Article 146 of the Constitution—Amendment of the motion for relief therein—See above.

Amendment—Amendment of a misdescription in the motion for relief in a recourse under Article 146 of the Constitution—See above.

Practice—Amendment—See above.

By this recourse under Article 146 of the Constitution, the Applicant seeks the annulment of the appointment of the Interested Party, Angeliki Pissi, to the post of "Assistant Superintendent of Homes". In fact the appointee was never appointed as aforesaid, but only as "Superintendent of Homes". After the expiration of the period of seventy five days prescribed under Article 146.3 of the Constitution for the filing of a recourse under that Article, Counsel for the Applicant has sought leave to amend the motion for relief so as to make it correspond with the realities of the case, on the ground that the misdescription was due to a clerical error. On the other hand counsel for the Respondent objected that the appointment of the appointee—Interested Party to the post of "Superintendent of Homes" was never attacked by the present recourse, and that it is too late to allow the Applicant to do so now.

1968
Sept. 3

—
KIRIAKI
TIKIROU
v.
THE PUBLIC
SERVICE
COMMISSION

In granting leave to amend, the Court:

Held, (1). I take the view that I have to look to the essence of the matter; and such essence is that Interested Party Pissi was appointed *only* as “Superintendent of Homes”, and it must have been all along the clear intention of the Applicant to attack the validity of such appointment, and not an appointment which had never been made.

(2) I accept, therefore, that the said misdescription is due to a clerical error and I have decided, under rule 19 of the Supreme Constitutional Court Rules, 1962, to allow the motion for relief to be amended accordingly; such amendment of a clerical error not being at all barred, in the circumstances of the matter, by Article 146.3 of the Constitution.

(3) Applicant to pay £10 costs to the Respondent.

Order and order as to costs, in terms.

Ruling.

Ruling in an application to amend the motion for relief in a recourse against the validity of a decision of the Respondent Public Service Commission concerning appointments to the post of “Superintendent of Homes”.

L. Papaphilippou, for the Applicant.

K. Talarides, Senior Counsel of the Republic, with
M. Kyprianou, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following Ruling was delivered by:—

TRIANTAFYLIDIS, J.: In this case, as the motion for relief has been drafted, Interested Party Angeliki Pissi is described as having been appointed as an “Assistant Superintendent of Homes”.

In fact, she was never appointed as “Assistant Superintendent of Homes”, but only as “Superintendent of Homes”. This is clearly stated in the Opposition, and it appears, also, in the relevant minutes of the Respondent Public Service Commission (see *exhibit 2F*).

The appointments of both Interested Parties, as Superintendents of Homes, came to the knowledge of the Applicant at a Departmental Conference on the 9th January, 1968; such appointments have not been published in the official Gazette.

The Applicant filed this recourse on the 21st March, 1968.

Counsel for the Applicant has sought leave to amend the motion for relief so as to make it correspond with the realities of the case; he has stated that the description of the appointment of Interested Party Pissi—challenged by this recourse—as “Assistant Superintendent of Homes”, instead of “Superintendent of Homes” was due to a clerical error.

On the other hand counsel for Respondent has submitted that the appointment of Interested Party Pissi to the post of “Superintendent of Homes” was never attacked by this recourse, and that it is too late to allow the Applicant to do so now.

I take the view that I have to look to the essence of the matter; and such essence is that Interested Party Pissi was appointed *only* as “Superintendent of Homes”, and it must have been all along the clear intention of the Applicant to attack the validity of such appointment, and not an appointment which had never been made. I accept, therefore, that the misdescription of the appointment of Interested Party Pissi, challenged by this recourse, is due to a clerical error and I have decided, under rule 19 of the Supreme Constitutional Court Rules, 1962, to allow the motion for relief to be amended accordingly; such amendment of a clerical error not being, in my opinion, at all barred, in the circumstances of the matter, by Article 146.3 of the Constitution.

The hearing has to be adjourned to enable counsel for the Applicant to file, within a week from today, an accordingly amended Application, putting right the said clerical error. Such amended Application will have to be served, in the usual course, on Interested Party Pissi, with a notice of the new date of hearing, which I fix to be the 21st October, 1968, at 10 a.m. There is no need to file an amended Opposition, because the Opposition adequately covers already the *sub judice* matter.

1968
Sept. 3

—
KIRIAKI
TIKIROU
v.
THE PUBLIC
SERVICE
COMMISSION

In my view the Applicant ought to have applied for leave to remedy the error in question as soon as the Opposition was filed. This was not done and this delay has resulted in the hearing being adjourned. The Applicant will, thus, have to bear the costs of the adjournment and it is hereby ordered that the Applicant should pay Respondent £10 costs in respect of today's adjournment.

*Order, and order as to costs,
in terms.*