

1981 February 28

[TRIANTAFYLIDIS, P.]

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Appellant,*

v.

SAVVAS PETRIDES,

*Respondent,*

(Application in Revisional Appeal No. 243).

*Civil Procedure—Practice—Stay of execution pending appeal—  
Application for—To be first made to the trial Judge—Rules 18  
and 19 of Order 35 of the Civil Procedure Rules.*

*Stay of execution pending appeal—Revisional jurisdiction case under  
Article 146 of the Constitution—Judgment annulling appoint- 5  
ments of public officers—Given under Article 146.4(b) of the  
Constitution—Does not require Public Service Commission to  
fill posts concerned at once—Therefore stay of execution  
on ground that appeal will be rendered nugatory if Commission  
proceeded to reconsider filling of said posts, before determination 10  
of the appeal, cannot be granted.*

By virtue of a judgment of a Judge of this Court there were  
annulled the appointments of two persons to the post of  
Assistant Cultural Officer. The Public Service Commission  
having appealed against the judgment, applied, also, for an 15  
order staying the operation of the said judgment until  
the determination of the appeal. The stay was sought on the  
ground that the appeal will be rendered nugatory if the  
Commission proceeded, before the determination of the appeal,  
to reconsider the matter of the filling of the two posts 20  
concerned. The application was at first placed before the  
trial Judge who made the following minute: "Once an appeal  
has been filed in this case, I do not feel I should deal with this  
application".

*Held*, (1) that this application was quite properly taken at 25  
first to the trial Judge in view of the provisions of Order 35,

rule 19, of the Civil Procedure Rules ; but, since he has not granted the order sought by the appellant, the matter is being dealt with now under the provisions of rule 18 of the said Order 35.

5           (2) *On the merits of the application :*

That if the order applied for by the appellant Public Service Commission is refused the present appeal will be not rendered nugatory, since the judgment annulling the appointments of the interested parties, which was given under Article 146.4(b) of the Constitution does not require the appellant Commission to proceed to fill the two posts concerned at once or at any specified time in the future ; accordingly the application must fail (pp. 248-49 post).

*Application dismissed.*

15 Cases referred to :

*Veis v. Republic* (1979) 3 C.L.R. 537 ;

*Katerina Shipping Inc. v. The Cargo on Board the Ship "Poly"* (1978) 1 C.L.R. 355.

**Application.**

20 Application by appellant for an order staying until the determination of the present appeal the operation of the judgment which was given by a Judge of the Supreme Court (Hadjiana-stassiou, J.) (Case No. 225/78) whereby the appointment of the two interested parties to the post of Assistant Cultural  
25 Officer in the Ministry of Education were annulled.

*R. Gavrielides*, Senior Counsel of the Republic, for the applicant.

*A. S. Angelides*, for the respondent.

*Cur. adv. vult.*

30 TRIANTAFYLIDIS P. read the following judgment: The appellant seeks, in effect, an order staying until the determination of the present appeal the operation of the judgment which was given by a Judge of this Court in recourse No. 225/78\* and against which this appeal has been made.

35 By virtue of the said judgment there were annulled the appointments to the post of Assistant Cultural Officer of two persons

\* See (1981) 3 C.L.R. 57.

who were the interested parties in the proceedings before the trial Judge. As they have not been made parties to the present application, they remain free to apply too—if they so wish—for an order staying the operation of the judgment by means of which their appointments were annulled.

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The reason for which the appellant Public Service Commission seeks to stay the operation of the judgment in question is that, allegedly, this appeal will be rendered nugatory if the Commission proceeds, before the determination of the appeal, to reconsider the matter of the filling of the two posts concerned.

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The power of this Court to grant, in a case of this nature, an order staying the execution or the operation of a judgment annulling, under Article 146 of the Constitution, an administrative act or decision, has not been disputed; and what, in my opinion, constitutes the legal basis for such a course has been expounded in *Veis v. The Republic*, (1979) 3 C.L.R. 537.

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The principles governing stay of execution pending appeal have been referred to, *inter alia*, in *Katarina Shipping Inc. v. The Cargo on Board the Ship "Poly"*, (1978) 1 C.L.R. 355.

The present application was at first placed before the Judge of this Court who has given the first instance judgment in this case and who, on January 28, 1981, made the following minute: "Once an appeal has been filed in this case, I do not feel I should deal with this application".

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This application was quite properly taken at first to the trial Judge in view of the provisions of Order 35, rule 19, of the Civil Procedure Rules; but, since he has not granted the order sought by the appellant, the matter is being dealt with now under the provisions of rule 18 of the said Order 35.

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I do not think that if I refuse the order applied for by the appellant Public Service Commission the present appeal will be rendered nugatory, since the judgment annulling the appointments of the aforementioned interested parties, which was given under Article 146.4(b) of the Constitution, does not require the appellant Commission to proceed to fill the two posts concerned at once or at any specified time in the future.

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Once the appointments made by the Commission to such

posts have been annulled, it is quite probable that the Commission, in the normal course of events, will, eventually, deal again with the filling of the said posts; but, in view of the nature of the jurisdiction under Article 146 of the Constitution, there is not, as already stated, anything in the judgment complained of which compels the appellant Commission to reconsider the filling of the posts in question immediately or at any specified time in the future; and, therefore, if the Commission decides either on its own, or on being moved accordingly by the—under the Public Service Law, 1967 (Law 33/67)—appropriate authority to allow these two posts to remain vacant pending the determination of the present revisional jurisdiction appeal, it could not, in my view, be contended that the Commission, by not proceeding to fill the said two posts in the meantime, is acting in disobedience to the appealed from judgment of the trial Judge in this case.

For the foregoing reasons I do not think that it is necessary or proper to grant in the present instance the order applied for by the appellant.

20 I am making no order as to the costs of this application.

*Application dismissed. No order as to costs.*