

1982 September 11

[TRIANTAFYLLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ALIKI ECONOMIDOU CHRISTODOULOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE EDUCATIONAL SERVICE COMMISSION,
2. THE COUNCIL OF MINISTERS,

Respondent.

(Case No. 72/81).

Time within which to file a recourse—Article 146.3 of the Constitution—Provisions thereof mandatory and they have to be applied in the public interest—Recourse against appointment and reappointment to post of Schoolmistress—Dismissed as being out of time. 5

This was a recourse against the decision of the respondent Educational Service Commission to appoint, instead of the applicant, the interested party, I. Georghiadou, to the post of schoolmistress, as from 15th October 1979, and to reappoint her further for the school-year 1980/1981. 10

Though Counsel for the respondent put forward the contention that the present recourse was out of time he did not pursue it in argument. The Court, however, proceeded to examine it because the provisions of paragraph (3) of Article 146 of the Constitution as regards the period of seventy-five days within which a recourse may be made are mandatory and they have to be applied in the public interest. 15

Held, that as applicant came to know of the appointment and reappointment of the interested party complained of the latest by the 19th and 27th November, 1980, respectively and her 20

recourse was filed on the 14th February, 1981, it appears that it is out of time and must be dismissed.

Application dismissed.

Cases referred to:

- 5 *Moran v. The Republic*, 1 R.S.C.C.10 at p. 13;
Pissas (No.1) v. Electricity Authority of Cyprus (1966) 3 C.L.R. 634 at p. 636;
PapaKyriacou v. The Republic, (1982) 3 C.L.R. 1151.

Recourse

- 10 Recourse against the decision of the respondent to appoint the interested party to the post of Schoolmistress in preference and instead of the applicant.

A. S. Angelides, for the applicant.

R. Vrahimi (Mrs.), for the respondent.

- 15 *Cur. adv. vult.*

20 TRIANTAFYLLIDES P. read the following judgment. By means of the present recourse the applicant challenges, in effect, the decision of the respondent Educational Service Commission to appoint, instead of her, the interested party, I. Georghiadou, to the post of schoolmistress, as from 15th October 1979, and to reappoint her further for the school-year 1980/1981.

The salient facts of this case appear to be as follows:

25 The applicant applied on 15th March 1974 for appointment as a schoolmistress. As a result her name was included in the relevant list of those eligible for appointment.

The interested party applied for appointment as a schoolmistress on 27th March 1974 and her name was, also, included in the aforesaid list, after that of the applicant.

30 It is alleged that in October 1979 it was decided to offer to the applicant appointment on contract as a schoolmistress. As, however, the efforts that were made to contact the applicant in order to inform her of the decision to appoint her were unsuc-

successful the interested party was appointed in her place on 12th October 1979.

Subsequently, the Council of Ministers decided (see its decision No. 19.509) to renew the contracts of appointment of all educationalists for the school-year 1980/1981 and, consequently, the contract of the interested party was renewed as well. 5

On 23rd September 1980 there were published in the daily press a list of transfers of educationalists, among whom was also, the interested party.

On 19th November 1980 the applicant, by a letter of her counsel, complained about the fact that she had not been appointed and the Chairman of the respondent Commission replied on 27th November 1980 informing applicant's counsel that the appointment in 1979 of the interested party was made only after it turned out to be impossible to contact the applicant in order to offer an appointment to her and that no new appointments were made for the school-year 1980/1981 because the Council of Ministers had decided to renew all contracts of all those who had been serving in the previous year. 10 15

The applicant has filed the present recourse on 14th February 1981 and she challenges the appointment of the interested party for the school-year 1979/1980, as well as for the school-year 1980/1981. 20

In ground of law 1 in the Opposition there was put forward the contention that the present recourse is out of time. Though this matter was not pursued in argument by counsel for the respondent I have decided to proceed to examine it because the provisions of paragraph (3) of Article 146 of the Constitution as regards the period of seventy-five days within which a recourse may be made are mandatory and they have to be applied in the public interest (see, inter alia, in this respect, *Moran v. The Republic*, 1 R.S.C.C. 10, 13, and *Pissas (No. 1) v. The Electricity Authority of Cyprus*, (1966) 3 C.L.R. 634, 636). 25 30

As regards the complaint of the applicant against the appointment of the interested party in October 1979 this recourse is clearly out of time, because it appears from a letter of the applicant's advocate, dated 19th November 1980, that by such date the applicant knew of the said appointment and yet this recourse was filed only on 14th February 1981, after the lapse of more 35

than seventy-five days from the 19th November 1980 when the applicant must have known about the sub judge appointment of the interested party in 1979

5 As regards the renewal of the appointment on contract of the interested party for the school-year 1980/1981 it must be borne in mind that, as already stated in this judgment, there was published in the press on 23rd September 1980 a list of educationalists who were being transferred one of whom was the interested party, as this list was published after the commencement, on 10 1st September 1980, of the school-year 1980/1981 anybody reading it must have realized that the interested party had been reappointed for service during the said school-year: so, it may be reasonably inferred that the applicant came to know of this reappointment as from 23rd September 1980. In any event, the 15 applicant must have come to realize that the contract of the interested party had been renewed when the Chairman of the respondent Commission wrote to her counsel the aforementioned letter dated 27th November 1980. Since this recourse was filed, as stated above, on 14th February 1981 it appears that it is 20 out of time, also, in so far as the sub judge renewal of the appointment of the interested party for the school-year 1980/1981 is concerned

Consequently, this recourse has to be dismissed on the ground that it is out of time

25 Even if, however, this recourse was not out of time as regards the renewal of the appointment on contract of the interested party for the school year 1980/1981 it would still have to be dismissed for, *mutatis mutandis*, the reasons for which I have today dismissed a similar recourse, 453/80 (*Papakyriacou v* 30 *The Republic* (1982) 3 C.L.R. 1151)* and it is not necessary to should be deemed to repeat all over again such reasons, it suffices to state that they be incorporated in this judgment

In the result this recourse fails and it is dismissed but, in the 35 circumstances, I will not make an order against the applicant as regards its costs.

Recourse dismissed No order as to costs

* This case was overruled on appeal, Rev. Appeal No 293 dated 5/7/83 to be reported in this Part in the issue of July-August 1983