

1985 August 9

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ANTHOULLA SAMOUEL,

Applicant,

v.

THE CYPRUS BROADCASTING CORPORATION,

Respondents.

(Case No. 188/80).

Cyprus Broadcasting Corporation—Promotions—Promotion to the post of Programme Officer—The Cyprus Broadcasting Corporation (Advisory Selection Committee) Regulations—Not valid as they were neither approved by the Council of Ministers nor published in the Official Gazette— As such Regulations are decisive in the outcome of promotions, the sub judice promotion must be annulled. 5

The applicant was appointed at the Cyprus Broadcasting Corporation (the Corporation) in 1965 on a temporary basis and, holds, since the 1st January 1968, the post of Assistant Programme Officer. On the 5th October 1979, applications were invited by notice published within the Corporation for the filling of the post of Programme Officer in the Department of Radio Programming which is a first entry and promotion post. 10 15

The candidates to this post were interviewed by the Advisory Selection Committee (the Committee) which was established under the Cyprus Broadcasting Corporation (Advisory Selection Committee) Regulations. The Committee, under the powers given to it by the said regulations, prepared a report in which it stated the candidates' experience and qualifications and classified them in order of their performance at the interview held by the said Committee. 20

Recourse.

Recourse against the decision of the respondents to promote the interested parties to the post of Programme Officer (Radio Programmes) in preference and instead of the applicant. 5

M. Christofides, for the applicant.

P. Polyviou, for the respondents.

K. Koushios, for the interested parties.

Cur. adv. vult.

L. LOIZOU J. read the following judgment. The applicant by this recourse seeks a declaration that the decision and/or act of the respondents by which the interested parties Georghios Damianou, Photos Photiades and Aleca Preka were promoted and/or appointed to the post of Programme Officer (Radio Programmes) instead of and in preference to her is null and void and of no legal effect. 10 15

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On the 5th October, 1979, applications were invited by notice published within the Corporation for the filling of the post of Programme Officer in the Department of Radio Programming, which is a first entry and promotion post.

On the 15th November, 1979, the Advisory Selection Committee (the Committee) met and considered the applications, which were five in number, amongst them those of the applicant and the interested parties and decided to call all five candidates for a personal interview (exhibit 6, p. 1). 25 30

As stated in the same exhibit, the Committee met again on the 22nd January, 1980, and after interviewing the candidates classified them unanimously, in order of their performance at the interview, as follows:

1. Photos Photiades 35

2. Alexandra Preka
3. Georghios Damianou
4. Anthoulla Samouel
5. Anna Demetriou.

5 The Committee then state that they consider all candidates suitable for the filling of the post and proceed to set out their qualifications and experience, in alphabetical order (pp. 2 and 3 of exhibit 6).

10 On the 21st March, 1980, a note was prepared, presumably by the Director-General of the Corporation, entitled "note concerning promotions" (exhibit 7). In this exhibit, which bears no signature, comments are made with regard to each of the candidates as follows:

15 "From the five candidates Samouel appears as the most senior, but her experience is basically restricted in the service of English Programmes (she is an assistant of the officer in charge of the English Radio Programmes).

20 Preka works in the cultural and recreation programmes service (Υπηρεσία πολιτιστικῶν καὶ ψυχαγωγικῶν προγραμμάτων) and has also experience in journalism.

25 Damianou, assists for some time effectively in the current affairs service (Υπηρεσία Ἐπικαιρῶν) and is distinguished for his zeal and his contribution.

Photiades has a rich artistic background and could assist in the theatrical section of the Radio."

The board of the respondent Corporation met on the 9th April, 1980, and decided as follows (exhibit 8):

30 "The Board after considering the report of the Advisory Selection Committee which it adopted and having heard the Director-General and considered the case of each one of the candidates decided to appoint Georghios Damianou, Aleka Preka and Photos Photiades to the post of Programme Officer, Radio Pro-
35 grammes, as from the 16th April, 1980."

The applicant as a result filed the present recourse challenging the validity of the above decision and praying for a declaration that it be declared null and void on the grounds, inter alia, that she is strikingly superior and should have been preferred to the interested parties, that the sub 5
judice decision is not duly reasoned and that the preparatory decisions and/or reports and/or recommendations of the Advisory Selection Committee and any other person, on which the sub judice decision was based are also void.

Learned counsel argued the case on the merits, the gist 10
of his argument being that the applicant is superior to the interested parties and also senior.

Considerable importance was attached by learned counsel for the respondents to the factor of the performance of the candidates at the interview having regard to the require- 15
ments of the schemes of service. The interviews were conducted by the Committee and the Board which took the final decision relied upon and adopted the report of the Committee in which the names of the candidates appeared 20
in the order of their performance at the interview with no other explanation or comment upon their performance.

As in another case heard by this Court and decided a short while ago the issue of the validity of the Cyprus Broadcasting Corporation (Advisory Selection Committee) Regulations, on the basis of which the Advisory Selection 25
Committee was established and under the provisions of which it functions, was raised and argued and it was there decided that the regulations in question were not valid on the ground that they were neither approved by the Council of Ministers nor were they published in the Gazette (Case 30
No. 106/79 *Anastassios Fanis v. The C.B.C.* decided on the 19th April, 1985—not yet reported)* I thought it fair and in the interest of justice to re-open the case so that 35
counsel appearing for the parties might have the opportunity to be heard on this issue which was not raised or argued when the case was heard.

At the hearing of this issue, which took place on the

* Now reported in (1985) 3 C.L.R. 775.

15th July, 1985, learned counsel for the applicant merely adopted what was decided in the *Fanis* case (supra).

Learned counsel for the respondents argued, citing the case of *Rita Messaritou v. The C.B.C.* (1972) 3 C.L.R.:
5 100, at 114, that it was reasonable for the C.B.C. to use the machinery that was used by them in effecting the promotions in question. In the *Messaritou* case, however, the point in issue was the validity of the Public Bodies (Regulation of Personnel Matters) Law, 1970 (Law 61 of 1970)
10 and no question of the validity of the Advisory Selection Committee Regulations arose.

But learned counsel contended that, although it could not fairly be said that the issue of the validity of the Advisory Selection Committee Regulations was argued before
15 the Court in that case, nevertheless, the promotions challenged had been made in part by the use of the aforesaid Regulations and in this respect they were in issue together with the provisions of Law 61/70; and as the Court held that it was reasonable to use the machinery that they used
20 in that case this amounts to judicial approval of the Advisory Selection Committee and, therefore, this fact is an argument in favour of the validity of the Selection Committee Regulations.

Learned counsel also argued that in all the cases cited
25 in the *Fanis* case (supra) the regulations involved purported to be regulations governing the whole process of promotions and were made under the enabling Law, whilst in the present case the power to appoint is by section 10 of the Law, Cap. 300A, conferred on the Corporation and there are also Regulations (The Cyprus Broadcasting Corporation (Conditions of Service) Regulations, 1966) which
30 were made under section 12 of the Law. It is the submission of counsel that the disputed regulations form only a small part of the procedure for appointments or promotions
35 and the function of the Committee is only to advise and assist the Board in reaching their decision. Counsel further argued that the regulations in question are really part and parcel of the collective agreement and should not be judged on the basis of the criteria of Public Law.

40 Having carefully considered the arguments advanced by

learned counsel for the respondent I find myself unable to depart from my judgment in the *Fanis* case (supra) which I adopt for the purposes of this case. As I said earlier on the question of the validity of the Advisory Selection Committee Regulations was not in issue in the *Messaritou* case and it cannot, in my view, be said that they were upheld by the judgment of the Court in that case. With regard to the second point raised by counsel, after perusing the contents of the Advisory Selection Committee Regulations (which were produced as exhibit "B") I find that they form an important part of the whole procedure and are decisive in the outcome of appointments or promotions. It is significant to note that under regulation 9 of these Regulations the power to examine and evaluate the respective merits of the candidates is vested in the Committee. And although ostensibly the Board may (under the proviso to regulation 12) themselves interview the candidates before making an appointment, a course which, in any event, was not followed in this case, this power is by regulation 12 restricted to those candidates selected by the Committee; and under the same regulation so is also their power to select the candidates for appointment or promotion restricted to those recommended by the Committee.

In all the circumstances the establishment of this Committee and its functions cannot, in my view, be considered as analogous to the setting up of a Board by a Head of Department consisting of subordinate officers of higher rank for the sole purpose of assisting him, in any particular case, in making a fair comparison between candidates of his department regarding their suitability for promotion and making his recommendations to the appointing Authority, a procedure approved in *Thalassinos v. The Republic* (1974) 3 C.L.R. 290.

The power to make regulations with regard to appointments and promotions is vested in the Corporation by virtue of s. 12 of the Cyprus Broadcasting Corporation Law but quite clearly the Advisory Selection Committee regulations were the regulations intended to govern the procedure for appointments and promotions and were, in fact, so treated; and it is in this light that they should be considered.

In the light of all the above and for the reasons stated in more detail in the *Fanis* case (supra) I find that the Advisory Selection Committee Regulations are not valid and as a result so, also, is the establishment of the Committee and that, consequently, the sub judice promotions, which were reached through the application of the procedure prescribed by such regulations must be annulled.

I have considered the possibility of the sub judice promotions being able to stand alone, after excluding the part dependent on the Regulations in question but I do not think this possible since the final decision was in effect a mere adoption of the conclusion reached by the Committee.

In view of my finding as above I consider it both unnecessary and undesirable to go into the merits of the case for the reason that any finding on the issue might prejudice any possible reconsideration of the case under some other procedure.

In the result this recourse succeeds and the sub judice promotions are hereby annulled. There will be no order as to costs.

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