

1985 September 4

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

- 1. PHRINI PAPADOPOULOU,
- 2. ALIKI FEREOU,

Applicants.

v.

- THE CYPRUS BOADCASTING CORPORATION THROUGH
- 1. THE BOARD OF CYPRUS BROADCASTING CORPORATION AND
 - 2. THE DIRECTOR-GENERAL OF CYPRUS BROADCASTING CORPORATION,

Respondents.

(Case No. 187/83).

Legitimate interest—Article 146.2 of the Constitution—Free and unreserved acceptance of an administrative act—Deprives applicant of legitimate interest.

The applicants complain against their appointment as Announcers/Newsreaders (Radio Television) with salary scale A8/9 instead of with salary scale A10; and they also complain against the respondents' refusal to emplace them in scale A10 in which they emplaced the applicants' male counterparts. 5

The applicants had accepted appointments to the said post as from 1.2.83 on the terms set out in the relevant offers, which included the provision that the salary scale was A8/9. 10

After their said appointment the applicants by letter dated 8.4.83 to which no reply has been received asked for their appointments to be made retrospective as from 31.12.81 and for emplacement on scale A10 in order to be accorded equal treatment with their male counterparts. 15

5 *Held*, (1) As the applicants unreservedly and freely accepted their said appointments, they have been deprived of legitimate interest in the sense of Article 146.2 of the Constitution to pursue this recourse against their appointment on scale A8/9. Further and as the matter of their retrospective appointment had been raised before their appointment, the fact that they freely and unreservedly accepted their appointment as from 1.2.83 deprives the applicants to pursue by this recourse this matter.

10 (2) The failure of the respondents to reply to applicants letter of the 8.4.83 implies a refusal to accede to applicants request made subsequently to their appointment for equal treatment with their male counterparts. A victim of alleged discrimination can specifically claim to have redress. The applicants' complaint is that subsequently to their appointment they were not accorded equal treatment with their male counterparts. Prima facie the applicants possess a legitimate interest to pursue in this respect the recourse.

20 *Recourse dismissed in part.*

Cases referred to:

Tomboli v. C.Y.T.A. (1980) 3 C.L.R. 266 and on appeal (1982) 3 C.L.R. 149;

25 *HjiConstantinou v. The Republic* (1980) 3 C.L.R. 184 and on appeal (1984) 3 C.L.R. 319;

Vlahou v. The Republic (1984) 3 C.L.R. 1319;

Michaelides v. The Republic (1984) 3 C.L.R. 1419;

Ayoub v. The Republic (1985) 3 C.L.R. 70;

Kalos v. The Republic (1985) 3 C.L.R. 135;

30 *Demetriou Dairy Products v. The Republic* (1985) 3 C.L.R. 758.

Recourse.

35 Recourse against the decision of the respondents to appoint applicants as Announcers/Newsreaders (Radio and Television) with salary scale A8/9 instead of salary scale

A10 and against the refusal of the respondents to em-
place applicants on scale A10.

K. Talarides, for the applicants.

P. Polyviou, for the respondents.

Cur. adv. vult. 5

TRIANTAFYLLIDES P. read the following decision. The
applicants complain, in effect, against their appointments,
as from the 1st February 1983, as Announcers/Newsreaders
(Radio and Television) with salary scale A8/9, instead of
with salary scale A10, and they, also, complain against the
refusal of the respondents to emplace them in the said
scale A10 in which there have been emplaced their male
counterparts. 10

A central issue in this case has been whether or not by
accepting offers of appointment to the post in question 15
with salary scale A8/9 the applicants have divested them-
selves of their legitimate interest, in the sense of Article
146.2 of the Constitution, which would entitle them to file
their present recourse.

The said offers of appointment were made in writing, to 20
each one of the applicants separately, on the 21st February
1983, and it was stated clearly in them that the salary
scale of the post was A8/9.

The applicants replied by letters dated 16th March 1983
and 17th March 1983, respectively, stating that they 25
accepted their appointments on the terms set out in the
said offers.

Having considered the contents of the aforementioned
documents and, also, all the other relevant circumstances
of this case as they emerge from the material before me, 30
I am satisfied that the acceptance of the aforesaid appoint-
ments by the applicants was unreserved and free and,
therefore, by such acceptance they have been deprived of
legitimate interest, in the sense of Article 146.2 of the
Constitution, entitling them to file their present recourse 35
against the sub judice decision of the respondents to appoint

them with salary scale A8/9 (see, inter alia, in this respect, *Tompoli v. The Cyprus Telecommunications Authority*, (1980) 3 C.L.R. 266 and, on appeal (1982) 3 C.L.R. 149. *HadjiConstantinou v. The Republic*, (1980) 3 C.L.R. 184
5 and, on appeal (1984) 3 C.L.R. 319, *Vlahou v. The Republic*, (1984) 3 C.L.R. 1319, *Michaelides v. The Republic*, (1984) 3 C.L.R. 1419, *Ayoub v. The Republic*, (1985) 3 C.L.R. 70, *Kalos v. The Republic*, (1985) 3 C.L.R. 135, and *Demetriou Dairy Products v. The Republic*, (1985)
10 3 C.L.R. 758).

In the light of the foregoing, therefore, this recourse has to be dismissed as regards the complaint of the applicants that they have been appointed with salary scale A8/9, and not with scale A10.

15 After, however, their said appointments the applicants, by a letter dated 8th April 1983 to which no written reply has been given, asked for their appointments to be made retrospective at the latest as from the 31st December 1981 and, in any event, for emplacement on scale A10 in order
20 to be accorded equal treatment with their male counterparts, who had been emplaced on scale A10.

As regards the applicants' claim for retrospective appointments it seems that this matter had, indeed, been raised by them at the end of 1981. They cannot, however, complain
25 now about the fact that their appointments were not made retrospective to a date earlier than the 1st February 1983, when such appointments commenced, because by having accepted, as aforesaid, their said appointments without any reservation to claim that they should be made retros-
30 pective to an earlier date they must be treated as having been deprived of a legitimate interest, in the sense of Article 146.2 of the Constitution, entitling them to file the present recourse against the non-retrospectivity of their appointments.

35 As regards, however, the applicants' complaint that, on the ground of sex, contrary to Article 28 of the Constitution, they have not been accorded, subsequently to their appointments, equal treatment with their male counterparts who were appointed with scale A10, I am of the view that

a victim of alleged discrimination on the ground of sex, or on any other ground, contrary to Article 28, can specifically claim to have redress in this respect; and, consequently, as at present advised, I am prepared to find, prima facie, that the applicants have not been deprived of a legitimate interest, in the sense of Article 146.2 of the Constitution, to challenge, by their present recourse, the refusal of the respondents to emplace them, subsequent to their appointments, on scale A10 on which their male counterparts had been emplaced; and such refusal is implied from the failure of the respondents to reply to the applicants' claim in this respect which was put forward by the aforementioned letter of the 8th April 1983.

Order accordingly.