

1986 July 14

[KOURRIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

POLYVIOS KOSMA,

Applicant,

v.

THE ELECTRICITY AUTHORITY OF CYPRUS,

Respondent.

(Case No. 515/85).

Public Corporations—The Public Corporations (Regulations of Personnel Matters) Law 61/70—Section 3—Electricity Authority of Cyprus—Promotions—In the absence of Regulations the Authority cannot assume competence in matters of promotions.

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Precedent—Doctrine of Stare Decisis—Decisions of Courts of coordinate jurisdiction—A passage from Kramvis v. The Republic (1986) 3 C.L.R. 1243 at p. 1252 adopted.

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The applicant challenges by means of this recourse the promotion of the interested party to the post of foreman of the respondent Authority. The applicant submitted that the decision is void as taken on the basis of Rules or Regulations which were void, because they were not made under s. 3(3) of Law 61/70 and they were not published in the Official Gazette. The respondents contended that in effecting the sub judge promotion they did not rely on any rules or regulations, but on s. 3 of Law 61/70, that the Board was not bound by the recommendation of the Joint Advisory Committee and in fact did not follow it, and that the existing rules were internal rules, not required to be published.

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Held, annulling the sub judge decision: (1) It has been decided by the Supreme Court by Judges of co-ordinate

jurisdiction that in the absence of regulations the respondents could not assume competence in matters of promotion and that the vacuum cannot be remedied either by the practice of the Authority or the collective agreement between the Authority and the Staff Unions. 5

(2) Having given the matter fresh consideration the Court found no reason for departing from the aforesaid first instance decisions of the Supreme Court. (A passage from *Kramvis v. The Republic* (1986) 3 C.L.R. 1243 at p. 1252 relating to the doctrine of stare decisis was cited and adopted by the Court.) 10

Sub judice decision annulled.

Cases referred to:

Kofteros v. E.A.C. (1985) 3 C.L.R. 394; 15

Arsalides v. CY.T.A. (1983) 3 C.L.R. 510;

Sofocleous v. E.A.C. (1984) 3 C.L.R. 1089;

Petroudes v. E.A.C. (1985) 3 C.L.R. 2245;

Savva v. E.A.C. (1986) 3 C.L.R. 80;

Kramvis v. The Republic (1986) 3 C.L.R. 1243. 20

Recourse.

Recourse against the decision of the respondent to promote the interested party to the post of foreman in preference and instead of the applicant.

K. Koushios, for the applicant. 25

S. Pouyiouros for *G. Cacoyannis*, for the respondent.

Cur. adv. vult.

KOURNIS J. read the following judgment. This is a recourse against the decision of the respondent Authority to promote the interested party to the post of foreman in preference and instead of the applicant. 30

The applicant challenged the decision of the respondent Authority, inter alia, on the ground that the decision was taken on the basis of rules and/or regulations which were

void and of no effect as they were not issued in compliance with s. 3(3) of Law 61/70 and they were not published in the Official Gazette.

5 Both parties applied to the Court for the determination of this preliminary legal issue.

10 Counsel for the applicant contended that the validity of rules or regulations made under the enabling power given by s. 3 of Law 61/70 require the approval of the Council of Ministers and their publication in the Official Gazette
15 was necessary and that since the rules or regulations whatever they may be, under which the sub judge decision was taken, were not published in the Official Gazette, the sub judge decision for promotion of the interested party is null and void as taken under non-existent
20 in law rules or regulations. He relied on the cases of *Kofteros v. The Electricity Authority of Cyprus* (1985) 3 C.L.R. 394, *Arsalides v. C.Y.T.A.* (1983) 3 C.L.R. 510, *Sofocleous v. Electricity Authority of Cyprus* (1984) 3 C.L.R. 1089, *Petroudes v. Electricity Authority of Cyprus* (1985) 3 C.L.R. 1245 and *Savva v. Electricity Authority of Cyprus*, Case No. 367/82, dated 17th February, 1986 to be reported in (1986) 3 C.L.R.

25 Counsel for the respondents contended that the respondent Authority in promoting the interested party did not rely on any rules or regulations but simply relied on s. 3 of Law 61/70. Counsel went on to say that the existing rules were internal rules and no publication was required regulating the proceedings for promotion before the Joint Advisory Selection Committee.

30 He argued that the Board was not bound by the recommendation of the Joint Advisory Selection Committee and indeed in the present case did not follow its recommendation. They derived their power for promotion, he said, by virtue of s. 3 of Law 61/70 and the applicant
35 by his recourse impugns the decision of the Board and not the decision of the Joint Advisory Selection Committee.

* Reported in (1986) 3 C.L.R. 80.

I have considered carefully the submissions of both parties and I have come to the conclusion that the argument of counsel for the respondent Authority is untenable. It has been decided by the Supreme Court by Judges of co-ordinate jurisdiction, in cases of promotion by the Electricity Authority of Cyprus, not for the first time, that in the absence of regulations the respondents could not assume competence with respect to the promotion of personnel and that the vacuum could not be remedied either by the practice of the Authority or the unpublished collective agreement between the Authority and the Staff Unions. The requirement for the exercise of the competence over personnel in accordance and subject to regulations was a fundamental prerequisite provided by law in the interest of sound administration.

With due respect I adopt what Pikiş, J., said in the case of *Petroudes v. The Electricity Authority of Cyprus* (1985) 3 C.L.R. 2245 at pp. 2247 and 2248:-

“Not for the first time we are faced with the assumption of power by the Electricity Authority of Cyprus over personnel matters in the absence of any regulations governing the exercise of such competence. In *Sophocleous v. E.A.C.* we decided, on examination of the provisions of s. 3 of Law 61/70, that no disciplinary jurisdiction could be assumed over the personnel of the Authority in the absence of Rules regulating the exercise of the power. It was pointed out that only regulations duly promulgated in the official Gazette could validate the assumption and exercise of competence in this area. And the same holds true in relation to promotions of personnel.

Law 61/70, passed in the aftermath of the events of 1963 and 1964, in order to fill the gap left by the withdrawal of Turkish officials from government machinery, conferred on public corporations the competence vested by the Constitution in the Public Service Commission with regard to personnel. The transfer or vesting of power was not unconditional. It was made expressly subject to observance of the

provisions of s. 3 of the law that provided that such jurisdiction could only be exercised in accordance with existing regulations of the Authority governing personnel matters or in the absence thereof in accordance with regulations to be specifically made thereafter. Section 3(3) in particular laid down that competence over the appointment and status of personnel could be exercised in accordance with regulations promulgated under the basic law. The Electricity Authority of Cyprus lacked Regulations governing personnel matters at the time of the enactment of Law 61/70 and made none thereafter. In the absence of such Regulations no competence could be assumed with respect to the promotion of personnel. The vacuum could not be gauged either by the practice of the Authority or the unpublished collective agreement between the Authority and the staff unions. The requirement for the exercise of competence over personnel in accordance and subject to regulations was not an inessential formality that could be ignored. It was a fundamental prerequisite postulated by the law for the exercise of the power in the interest of sound administration. Regulations make for certainty in public administration and aim to erect a barrier against the arbitrary exercise of authority. In their absence the Electricity Authority of Cyprus could not exercise any competence in relation to promotions of personnel. For that reason the decision here under consideration is wholly abortive".

I also adopt with due respect what Pikis, J. said in the case of *Petros Kramvis v. The Republic* (Case No. 198/84 etc., dated 30th June, 1986*, not yet reported, with regard to decisions of Courts of co-ordinate jurisdiction, which reads as follows:-

"A Court of first instance is not bound under the doctrine of stare decisis by decisions of Courts of coordinate jurisdiction and in that sense the principles adopted in the aforesaid judgment respecting the le-

* Reported in (1986) 3 C.L.R. 1243 at p. 1252

gality of the Regulations are not binding on the Court. On the other hand, judgments of Courts of coordinate jurisdiction are a source of persuasive authority and should be adhered to unless the Court is clearly of opinion that the principle adopted is wrong or does not reflect the correct principle of the law because of oversight or error in the reasoning. Moreover, when a principle finds expression in a series of judgments of first instance, a Court of coordinate jurisdiction must have very compelling reasons to deviate or depart therefrom. Any other approach would throw the law into a state of uncertainty to the detriment of the rule of law. Adherence to decisions of Courts of coordinate jurisdiction does not derive from any sense of comity among Judges but from the need to sustain certainty in the law.”

Having given the matter fresh consideration as invited to, I find no reasons for departing from the aforesaid first instance decisions of the Supreme Court.

For all the above reasons the sub judice decision is annulled.

Let there be no order as to costs.

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