

1986 September 20

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ANASTASSIA A. MATSOUKARI,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH

- (A) 1. THE PUBLIC SERVICE COMMISSION,
2. THE MINISTER OF INTERIOR,
3. THE DEPARTMENT OF LANDS AND SURVEYS,
4. THE PUBLIC ADMINISTRATION AND
PERSONNEL SERVICE,
5. THE MINISTER OF FINANCE,
6. THE COUNCIL OF MINISTERS,
(B) 1. THE PUBLIC SERVICE COMMISSION,
2. THE PUBLIC ADMINISTRATION AND
PERSONNEL SERVICE,

Respondents.

(Case No. 729/85).

*Legitimate interest—Constitution, Article 146.2—Public Service
—Appointments of public officers—Withdrawal of proposal
to fill the vacancies in question—Whether and in what
circumstances such withdrawal affects the legitimate inter-
est of a candidate for appointment.*

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*Public Service Commission—Competency—Limited to matters
concerning officers and not to the offices in the Public
Service—Withdrawal by appropriate Authority in good faith
and for a valid reason of proposal for filling of vacancies
in the Public Service—Commission ceased to have any
authority to proceed with the filling of the vacancies.*

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On the 17.9.82 67, later found to be 63, vacancies for

the post of Land Clerks, Second Grade, were advertised. In response thereto 748 applications were submitted. The applicant was among those applicants and among the 242 candidates, who were recommended for appointment to the said post by the Departmental Board, set up under s. 36 of the Public Service Laws 1967-1983. 5

By letter dated 23.5.85 the Director-General of the Ministry of Interior withdrew the proposal for the filling of the said vacancies. As a result the Public Service Commission decided that under the said laws they could not proceed with the procedure of filling of the posts and informed all candidates accordingly. Hence the present recourse. 10

It should be noted that the reason for the said withdrawal of the proposal was the furtherance of an agreement reached at a meeting of a Ministerial Committee for the absorption of the temporary officers serving in the Public Service. 15

Held, dismissing the recourse: (1) The principle that may be discerned from the authorities is that the act or decision of an appropriate Authority to withdraw a proposal to fill a vacancy cannot be made the subject of a recourse under Article 146 of the Constitution as it does not affect a legitimate interest of a candidate unless the procedure of selection has gone so far—or possibly for other reasons that do not arise in this case—that such withdrawal can be safely considered in the circumstances to be intended to prevent such candidate's appointment. 20 25

(2) It is obvious that in this case there cannot be ascribed to the appropriate Authority any intention to frustrate the appointment of anyone of the candidates and, therefore, the applicant has no existing legitimate interest. 30

(3) In any event the duties of the Public Service Commission are limited to matters concerning officers and not the offices involved and, therefore, once the proposal for the filling of the vacancies was withdrawn by the appropriate Authority in good faith, and validly so for a legitimate reason, i.e. furtherance of an agreement for the 35

solution of a labour problem, the Commission ceased to have any authority to proceed with the filling of the vacancies.

Recourse dismissed.

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No order as to costs.

Cases referred to:

Contopoulos v. The Republic, 1964 C.L.R. 347;

Papapetrou v. The Republic, 2 R.S.C.C. 61;

Tatianos Georghiou v. The Republic, (1965) 3 C.L.R. 177;

10 *Zachariades v. The Republic*, (1981) 3 C.L.R. 124, and
on appeal *Zachariades v. The Republic* (1984) 3
C.L.R. 1193.

Recourse.

15 Recourse against the decision of the respondents not to
proceed with the filling of the vacant posts of Land Clerk
2nd Grade in the Department of Lands and Surveys.

Ph. Clerides, for the applicant.

A. Papasavvas, Senior Counsel of the Republic, for
the respondents.

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Cur adv. vult.

25 A. LOIZOU J. read the following judgment. The appli-
cant is serving in the permanent post of Clerk Second
Grade in the General Clerical Staff since the 1st July
1983, having previously been appointed to the correspond-
ing temporary post since the 1st February 1977. She ap-
plied for that post as there were no chances for women to
be appointed in the Lands Office as she claims to have
been told by her superiors. As, however, other women were
thereafter appointed as Land Clerks, she also made suc-
30 cessive efforts towards that direction but without success.

35 By Notification No. 1978 published in the Official Ga-
zette of the Republic of the 17th September 1982, sixty-
seven, later found to be sixty-three, vacancies for the post
of Land Clerks, Second Grade, a first entry post in the
Department of Lands and Surveys, were advertised. In
response thereto 748 applications were submitted.

A Departmental Board was set up under the provisions of Section 36 of the Public Service Laws, 1967-1983 and Order 3 of the Regulatory Orders. On the 29th May, 1984, the Chairman of the said Board transmitted to the respondent Commission its report in which there were 242 candidates recommended for selection for appointment, one of them being the applicant. A supplementary report was later submitted to the respondent Commission as a result of further explanations sought by it from the Board.

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By letter dated the 23rd May, 1985, (Appendix 17) the Director-General of the Ministry of Interior withdrew the proposal for the filling of the aforementioned vacancies. He referred therein to the letter of the Director-General of the Ministry of Finance dated the 29th April 1985, (Appendix 16) in which reference is made to the agreement reached at a meeting of a Ministerial Committee for the absorption of the temporary officers serving in the Public Service.

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In this later exhibit the Director-General of the Ministry of Finance asked the Director-General of the Ministry of Interior to act for the withdrawal of the proposal for the filling of vacant posts relating to the services of that Ministry and appearing in Part A of the Schedule attached thereto and that the respondent Commission be requested to suspend the procedure for the filling of the vacant posts which appear in Part B of the same Schedule, again regarding posts in the various Departments in that Ministry.

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It appears that in both Schedules there were numerous vacant posts other than those sixty-three for which the applicant was a candidate. The reasoning therefore for the decision to withdraw has to be considered as supplemented by this material.

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The respondent Commission at its meeting of the 29th May, 1985, having taken into consideration that the appropriate Authority withdrew its proposal, decided, that under the Public Service Laws of 1967 to 1983 they could not proceed with the procedure of filling of the posts and informed all candidates accordingly as per their letter of the 14th June, 1985, Appendix A, attached to the appli-

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5 cation. Subsequent to that letter the applicant through her
counsel asked by letter dated 25th July, 1985, Appendix
20, certain clarifications as to which was the appropriate
Authority which withdrew the proposal for the filling of
the post and what was the reasoning for such withdrawal.

10 In reply thereto the respondent Commission by letter
dated 10th August 1985, informed the applicant that the
appropriate Authority that withdrew their proposal for the
filling of the said post was the Minister of Interior who in
accordance with the Public Service Laws 1967-1983 acts
usually "through the Director-General of his Ministry in
15 respect of his Ministry and any department under his Mi-
nistry". Furthermore that the said proposal was withdrawn
after an agreement was reached between the Government
and the Civil Servants Trade Union for the absorption of
Temporary (Εκτάκτων) Officers in public offices.

20 It has been submitted on behalf of the applicants that
once a post has been created by the legislature at the
suggestion of the executive the need for its filling has been
accepted by both branches of Government and the exe-
cutive has a duty within a reasonable time to set in mo-
tion, the mechanism for its filling and such need has been
recognized in this case. The second submission of counsel
is that although the task of the respondent Commission is to
25 decide who will be appointed once the post was advertised
and never withdrawn it should have proceeded to complete
the examination of the applications irrespective of the fact
that the appropriate Authority chose to withdraw its pro-
posal for its filling through other means and not through
30 the media of the Public Service Commission.

It was contended that in accordance with Section 5 of
the Public Service Law, the appointment of public servants
is one of the duties of the Public Service Commission and
that in accordance with Section 31(1) every vacant post
35 must be advertised, as it was duly done in this case, and
must be filled in accordance with Section 32(1) of the said
Law. The third alternative submission has been that even
if it was not the duty of the respondent Commission to
proceed with the further examination of the application of

the applicant in view of the stand the appropriate Authority had taken, yet the legality of the decision of the appropriate Authority must be considered in accordance with the general principles of Administrative Law. In that respect it has been argued that:

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“In so acting the appropriate authorities, i.e. the Ministry of Finance and the Ministry of Interior:-

- (a) Contravened Article 125 of the Constitution and Section 5 of Law 33/67 in that in the absence of any legislative provision at all material times it decided that the posts should be filled by a certain class of persons only i.e. ‘Εκτόκτους’.

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This decision is contrary to the established constitutional and legislative authority of the P.S.C. to decide ‘who will get the job’.

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- (b) They decided contrary to the scheme devised by Article 125 and Law 33/67 to step into the shoes of the Public Service Commission and in essence reject all pending applications for appointment in the post.

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- (c) They acted contrary to the principle of good faith and good administration in that they gave priority to a certain class of persons irrespective of their qualifications, abilities, etc., as opposed to existing applicants.

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- (d) Rather than allow the ‘special’ (Εκτόκτους) employees to compete with all the rest of the applicants as was the original decision of the Public Service Commission they chose a method more undesirable/detrimental to the other applicants.

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- (e) They deliberately failed to comply with the recommendation of the Public Service Commission of 26.1.1984—Exhibit 15 to the opposition—to hold written examinations.

- (f) They ordered a suspension of the procedure for the filling of the vacancies in order to discriminate in favour of a certain class of applicants in excess and

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or abuse of powers and contrary to the principle of equal treatment.”

On the other hand a number of preliminary objections have been raised by the respondents. The first one is regarding the joining of several Ministries and Government Departments including the Council of Ministers as respondent in this recourse. The second one is that the applicant does not challenge an executory administrative act within the ambit of Article 146 of the Constitution and the third one is that the applicant has no present legitimate interest. Although there appears to be merit in the first objection as regards several of the parties so joined as respondents, I do not intend to deal at any length with it as it has no practical significance in view in particular of the ultimate outcome of this recourse, but I shall take, however, the last two objections together in view of their co-relation.

In the case of *Contopoulos v. The Republic*, 1964 C.L.R. p. 347 it was held that the Public Service Commission can properly take into account the request of the Ministry of Interior not to fill the vacancies in the post of Land Officer pending the re-organization of the Department concerned. That was a case where the Public Service Commission considered the question of the filling of certain vacancies and called for interview a number of Land Clerks First Grade, one of whom was the applicant. Before, however, the Commission had effected any promotion, a letter was written by the Ministry of Interior to the Commission requesting them not to proceed with the filling of vacancies in certain posts including the post of Land Officer in view of the impending re-organization of the Lands and Surveys Department which comes under the Ministry of Interior. The applicant who, taking into account his seniority and other factors could probably have been promoted to the post in question was not promoted and he eventually retired, being still a Land Clerk, First Grade.

Triantafyllides, J., as he then was pointed out that the duties of the Public Service under Article 125 are limited to matters concerning the officers and not the office in-

volved. (Vide *Papapetrou and The Republic*, 2 R.S.C.C. p. 61 at p. 66). He went on to say that it is not for the Public Service Commission to decide when a vacancy is to be filled by way of promotion as this matter lies within the competence of the Executive Branch of the Government and that it is only when such vacancy is to be filled that the Commission has exclusive competence to decide on who is to be promoted or appointed to the post in question. 5

In *Tatianos Georghiou v. The Republic* (1965) 3 C.L.R. 177 as regards the abolition by the Electricity Authority of the post of its Internal Auditor after the selection of that applicant by the Public Service Commission, though the formalities of completing his appointment had not been completed, it was held that "irrespective of whether on other circumstances the abolition of a post in the establishment of the Authority or of any other Independent body might not be taken as directed against anybody aspiring for appointment or promotion to such post, in the present case it is abundantly clear that the abolition of the post of Internal Auditor was purposely aimed at preventing applicant from being appointed to the post in which he had been selected by the competent organ, the Commission and thus it is an act which has adversely and directly affected in the sense of Article 146.2 an existing legitimate interest of the applicant and likewise the relevant legitimate interest of applicant has been directly and adversely affected by the fact that the Commission did not in the circumstances proceed to the formalities necessary for the implementation of his appointment as already decided upon it. 10 15 20 25

It has to be noted in relation to the principles therein expounded that the Commission had completed the discharge of its relevant function and there was nothing further to be done by it under such competence in order to complete the applicant's appointment. Consequently it was rightly so, if I may say with respect, held by the Full Bench of this Court that the abolition of the post in question was purposely aimed at preventing that applicant from being appointed to the post for which he has been selected, hence it was found to be an act which adversely and directly affected in the sense of Article 146.2 of the Constitution an existing legitimate interest of his. 30 35 40

Furthermore reference was made therein to a decision of the French Council of State, namely in the case of Syndicat national autonome du cadre de l'administration générale des colonies, on the 20th May, 1955 (Recueil des arrêts du Conseil d'Etat, 1955, p. 273). In that case it was held that the cancellation of a competition for filling vacancies in the French overseas administration did not affect acquired rights of candidates in the competition.

It was further differentiated with the case of *Tatianos* in that that applicant was not just a candidate in a competition which was cancelled and this is the gist of it but "he had been actually finally selected for appointment".

At pp. 186, 187, in the judgment of the Full Bench delivered by Triantafyllides, J., as he then was, the following was said:

"In the present Case the Court is not, in reality, faced with a decision of the Board of the Authority to abolish a post in its establishment, which was taken in the interests of the efficiency of such establishment, as viewed apart from personalities involved (see *Rossides and the Republic*, 3 R.S.C.C. p. 95). Only in such a case could there have been a possibility of genuinely describing such decision as an organic one. In the present Case we are concerned with the abolition of a post for the purpose of preventing the appointment thereto, by the Commission of a particular person. It was an act made by the Authority, which had no competence to decide upon the selection of the person to occupy the post in question, in order to frustrate the outcome of the exercise of the competence of the body which was entrusted with such selection under Article 125, namely the Commission.

In other words what could have been an organic decision of the Authority has in effect been used as a means of frustrating an individual administrative act of the Commission.

The Court is of the opinion that whenever an act is done by an organ, other than the Commission, for the very purpose of frustrating the implementation of

an individual administrative decision taken by the Commission in the exercise of its exclusive competence, that act is by its nature so closely linked with such competence and the individual administrative decision taken by the Commission under it, that it is itself subject to recourse under Article 146, in the same way as the relevant decision of the Commission would have been subject to such recourse.” 5

It was also held that the abolition of the post, in the circumstances constituted an act or decision subject to the competence of this Court under Article 146 of the Constitution. 10

In *Zachariades v. The Republic* (1981) 3 C.L.R. 124, Demetriades J., trying the case in the first instance, on the question whether the applicant as a result of the decision of the Public Service Commission, to promote him to the post of District Officer had acquired a legitimate interest and thus he was entitled to judicial redress, held that unless a promotion is perfected or completed by an offer and acceptance the Commission can freely revoke the “intended but never completed administrative act” and that in that case the respondent Commission revoked its decision before it was perfected and therefore the applicant had not acquired a legitimate interest and was not entitled to judicial redress. It may be noted here that the Minister of Interior had written to the Chairman of the Commission and informed him that he was withdrawing the request for the filling of the said post giving as a reason for doing so a study that was being carried out for the re-organization of his Ministry. It was upon that, that the selection of that applicant was revoked. 15 20 25 30

On appeal, however, to the Full Bench. *Zachariades v. The Republic* (1984) 3 C.L.R. 1193, it was held that “the unlawful interference by the Minister of Interior” which prevented that applicant from being appointed to a post for which he had been selected by the competent organ, the Public Service Commission, and as a result of which the Commission did not in the circumstances proceed to the formalities necessary for the implementation of his 35

appointment as already decided by it, was an act which adversely and directly affected in the sense of Article 146.2 of the Constitution an existing legitimate interest of the applicant.

- 5 It has to be observed that both in *Tatianos* and *Zachariades* cases the procedure of selection and appointment of the person so selected was prevented by the decision of the appropriate Authority or some other person found not to be competent to do so and the appointment was frustrated.
- 10 The position in the present case is different.

The principle, therefore, that may be discerned from these Authorities is that the act or decision of an appropriate Authority to withdraw a proposal to fill a vacancy cannot be the subject of a recourse under Article 146 of the Constitution as it does not as such affect a legitimate interest of a candidate unless the procedure of selection has gone so far—and possibly for other reasons that do not arise in this case—that such withdrawal can be safely considered in the circumstances to be intended to prevent such a person's appointment.

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In the present case it is obvious that there cannot be ascribed to the appropriate Authority an intention to frustrate the appointment of anyone of the candidates, more so of the present applicant as there had been no selection whatsoever out of the 748 candidates. This recourse therefore should fail on the ground that the applicant does not have an existing legitimate interest, having acquired no right in the matter.

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In view, however, of the nature of the issue, I feel that I should proceed to examine also the recourse on its merits on the assumption that the sub judice act constitutes an act or decision subject to the competence of this Court under Article 146 and the applicant had an existing legitimate interest which entitled her to file the present recourse.

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It is clear that once the proposal for the filling of the vacancy was withdrawn by the appropriate Authority in all good faith, and validly so for a legitimate reason, namely the furtherance of an agreement for the solution of what

may be described as a labour problem and so the vacancies might not ultimately exist, the respondent Commission was left with no authority to proceed with the procedure for the filling of the vacancies—as the duties of the Public Service Commission are limited to matters concerning officers and not the offices involved, as held in the *Contopoulos case* (supra) and the authorities therein mentioned. It is only when such a vacancy has to be filled that the Public Service Commission has exclusive competence to decide on who has to be promoted or appointed to a post.

For all the above reasons this recourse is dismissed but in the circumstances there will be no order as to costs.

Recourse dismissed.

No order as to costs.