

1986 November 3

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

THEODORA ALEXANDROU KKELI.

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PERSONNEL AND PUBLIC  
ADMINISTRATION DEPARTMENT,

*Respondents.*

(Case No. 232/85).

*Recourse for annulment—Amendment of motion of relief of—  
Proposed new relief amounting to a challenge of a distinct  
administrative act—If such act had been challenged by a  
new recourse, such new recourse would have been out  
of time—Proposed amendment cannot be granted.*

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*Legitimate interest—Appointment of casual employees to per-  
manent posts in the public services, not on the basis of  
selection, but in accordance with Law 32/81—Casual  
employee not appointed does not have a legitimate inte-  
rest to challenge the appointments of other persons in  
accordance with said law.*

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This recourse is directed against respondent's decision,  
communicated to applicant's counsel by letter dated  
16.1.85, whereby the applicant was informed that, she  
did not possess the qualifications required by the scheme  
of service for the permanent post of House Keeper in  
the Department of Welfare Services as provided by s.  
3(2) of Law 32/81.

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This is an application whereby the applicant applies  
that the title of the recourse be amended by the addition  
as respondent of the Public Service Commission, that

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the prayer of the recourse be amended by the addition of the following prayer, namely a declaration that the decision of the respondents published in the official Gazette dated 23.3.84 whereby four persons were appointed and/or promoted to the said post is null and void, that the grounds of law be amended by the addition of a new ground to the effect that the sub judice decision disregarded the rights of the applicant and that the facts be, also, amended by the inclusion of an allegation that the applicant should have been preferred to the other persons appointed, because of the rights acquired and/or vested in her by her service and the fact that she possessed, at the material time, the qualifications required by the scheme of service.

*Held, dismissing the application:* (1) The motion of relief of a recourse should not be amended, if such amendment would in effect amount to a new recourse challenging another distinct administrative act which, if filed on the date of the amendment, would be out of the time limit prescribed by Article 146.3 of the Constitution. In this case the proposed new motion of relief is directed against the distinct act of appointment of four other persons made by the proposed new respondent, i.e. the Public Service Commission, and published on 23.3.84. If it was to be challenged now by a new recourse, such recourse would be out of time. In any event, the applicant does not possess any legitimate interest to challenge the appointment of the said four persons, as such persons were not appointed after comparison or selection, but on the basis of Law 32/81, which provides for the appointment to permanent posts of casual employees serving in the public service on 1.12.77, provided they possess the qualifications required by the scheme of service.

(2) The proposed amendment of title cannot be accepted because the sub judice decision is that of the respondent in the present recourse and not that of the Public Service Commission.

(3) There is no need to amend the grounds of law, as proposed, because the proposed ground, has, already, been included in the original ground 4.

(4) In view of the dismissal of the application for amendment of the motion of relief, the amendment of the facts, as proposed, cannot be accepted.

*Application dismissed with costs.*

**Cases referred to:**

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*Paralimni Bus Co. Ltd. v. The Republic* (1967) 3 C.L.R. 559;

*Lanitis Farm Ltd. v. The Republic* (1982) 3 C.L.R. 124;

*Aristidou v. The Republic* (1984) 3 C.L.R. 503.

**Application.**

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Application for amendment of a recourse for annulment, directed against the refusal and/or omission of the respondent to appoint and/or promote applicant to the post of Housekeeper in the Department of Welfare Services, by adding a new motion of relief, a new respondent, a new ground of law and new facts. 15

*S. Sofroniou* for the applicant.

*E. Papadopoulou (Mrs.)*, for the respondent.

*Cur. adv. vult.*

SAVVIDES J. read the following judgment. The applicant in the present recourse prays for:- 20

“A. A declaration that the refusal and/or omission of the respondents dated 16.1.1985, to appoint and/or promote her to the post of Housekeeper in the Department of Welfare Services is void and of no legal effect whatsoever and whatever has been omitted should be performed. 25

B. Costs.”

The applicant was appointed in the service on 1.11.1971, as a domestic servant on a casual basis and on 1.6.1978 duties of a Housekeeper were assigned to her. 30

On 2.7.1979 the post of “Housekeeper” was, by a decision of the Ministries of Finance and Labour and So-

cial Insurance, abolished and renamed as "Institutional Assistant".

5 On the 23rd March, 1984, the appointment of four casual Housekeepers to the permanent post of Housekeeper was published in the official Gazette. The applicant who was not appointed protested and the Director of Welfare Services informed her counsel, by letter dated the 30th May, 1984, that the post of Housekeeper was abolished and re-named as "Institutional Assistant", that her non-  
10 emplacement to the latter post was due to a mistake and that the Department intended to emplace her to the post of Institutional Assistant retrospectively, as from 1.11.1979. Applicant's counsel was further informed that the appointments of other persons to the permanent post of House-  
15 keeper were made in accordance with section 3 of Law 32/81, which did not apply to the applicant.

The applicant sent another letter to the Director of Welfare Services, who replied by letter dated 18.7.1984, again explaining the situation.

20 Finally, applicant's counsel addressed on 4.12.1984, a letter to the Department of Public Administration and Personnel (the respondent) claiming that his client should be appointed to the post of Housekeeper. To this the respondent replied by letter dated the 16th January, 1985,  
25 informing him that his client was not entitled to be appointed to the post in question because she did not possess the qualifications required by the scheme of service for the post, as provided by section 3(2) of Law 32/81.

30 The applicant challenged the above decision by the present recourse, filed on 22.2.1985.

The recourse was based on several general grounds including failure on the part of the respondent to select the best candidate for appointment, contravention of the law, the Constitution, natural justice and vested rights of the  
35 applicant, misconception of fact, lack of due inquiry and of reasoning and excess and abuse of powers.

Counsel for the respondent raised, by her opposition, the preliminary objection that the sub judice decision is

not an executory one and further that the recourse is directed against an organ which did not take any decision in the matter.

On the 5th June 1985, before the case was fixed for hearing, counsel for the applicant applied by summons, for the amendment both of the title of the recourse and certain parts of the grounds of law and the facts as set out therein. This application was, however, withdrawn and a new one was filed, on the 25th June, 1985, by which, in addition to the amendments proposed by the previous application, an amendment of the prayer of the recourse was sought, by the addition of a new paragraph. By this proposed amendment the title and prayer of the recourse would read as follows:

“Theodora Alexandrou Kkeli, 15

*Applicant.*

and

1. The Republic of Cyprus,
2. The Public Administration and Personnel Service, 20
3. The Public Service Commission.”

And the prayer:-

“(A) A declaration of the Court that the act and/or decision of the respondents, published in the official Gazette of the Republic dated 23.3.1984, by which 1. Chrystalla Klitou Papamichael, 2. Diamando Ioannou, 3. Despina Athenodorou and 4. Kyriaki N. Kyriakou were appointed and/or promoted to the post of Housekeeper, in the Department of Welfare Services, is void and of no legal effect whatsoever. 25

“(B) A declaration of the Court that the refusal and/or omission of the respondents dated 16.1.85 to appoint and/or promote the applicant to the post 30

of Housekeeper in the Department of Welfare Services is void and of no legal effect whatsoever.

(C) Costs.”

5 A new ground of law was also added by the proposed amendment to the effect that the sub judice decision disregarded the vested rights of the applicant. Also, paragraph 5 of the facts in support of the application was extended to the effect that the applicant should have been preferred to the other persons appointed because of the rights  
10 acquired and/or vested in her by her service and the fact that she possessed, at the material time, the qualifications required by the scheme of service.

The application was opposed on the ground that by the proposed amendment a new recourse is constituted,  
15 challenging another administrative act. which would be out of time. The application for the amendments as above is the subject matter of this decision.

Counsel for the applicant by his written address in support of his application for amendment argued that the proposed new paragraph A, did not amount to a new recourse and that it is justified, because the applicant, could  
20 not file a recourse against the decision of 23.3.1984 within time, but had to wait for the outcome of her objection against her non-appointment.

25 Counsel for the respondent argued that by the original recourse the decision contained in the letter of 16.1.1985, sent by the Public Administration and Personnel Service was challenged whilst by the proposed amendment another decision, dated 23.3.1984, by which the intended interested parties were appointed, is challenged. The time limit  
30 for challenging this decision, counsel added, has lapsed and the decision cannot be challenged now. In any event, counsel maintained, the appointment of the intended interested parties was not made after a selection or comparison between candidates but was the result of the application of Laws 32/81 and 15/82. Counsel lastly contended that the application for the amendment of the title  
35 of the recourse should also be dismissed because by

allowing it the decision of 23.3.1984 would be challenged indirectly.

It has been established by case law that the motion for relief of a recourse should not be amended if such amendment would in effect amount to a new recourse challenging another distinct administrative act which, if filed on the date of the amendment, would be out of the time limit prescribed by Article 146.3 of the Constitution. (*Paralimni Bus Co. Ltd. v. The Republic* (1967) 3 C.L.R. 559 at 561; *Lanitis Farm Ltd. v. The Republic* (1982) 3 C.L.R. 124 at pp. 132, 133; *Aristidou v. The Republic* (1984) 3 C.L.R. 503, at p. 507).

In the present case the recourse is directed against the contents of the letter dated the 16th January, 1985, written by the Public Administration and Personnel Service, to the effect that the applicant was not entitled to be appointed, on the basis of Law 32/81, to the post of House-keeper because she did not possess the qualifications required by the scheme of service for the post.

The relief sought by the proposed amendment, by the addition of the new paragraph A, is directed against the appointment of four other persons, the interested parties, to such post, which was published on 23.3.84 and which was obviously effected by the Public Service Commission.

The decision appointing the intended interested parties is another administrative act completely different from the one originally challenged by this recourse. It came to the knowledge of the applicant upon its publication on 23.3.1984 and she did not challenge same. If it was to be challenged now, by a fresh recourse, this recourse would have clearly been out of time. In the light of the case law as explained above, I cannot allow this amendment. In any event the non appointment of the applicant has nothing to do with the appointment of the proposed interested parties since they were not so appointed after comparison or selection but on the basis of Law 32/81 which provides for the appointment to permanent posts of casual employees serving in the public service on 1.12.1977, pro-

vided such employees possess the qualifications required for the particular post. In view of this the applicant would not have any legitimate interest to challenge the appointment of those persons who obviously were not appointed in preference to her.

With regard to the proposed amendment of the title of the proceedings so as to make the Public Service Commission a party to the recourse, again this cannot be granted. According to section 3(1) of Law 32/81 the Director of the Public Administration and Personnel Service prepares a list of the casual employees who satisfy the requirements for appointment and sends them to the Public Service Commission. In the present case the Director of the above Service, decided that the applicant does not satisfy the requirements for appointment. In any event the decision challenged is that of the respondent in the present recourse and not any decision of the Public Service Commission.

What remains to be considered is the amendment of the grounds of law and paragraph 5 of the facts as set out in the application.

The proposed new ground of law No. 6(b) is in effect included in the original ground 4 and its addition will not add anything to the recourse.

As to the amendment of the facts, I feel that this should not be allowed in view of the dismissal of the application for the amendment of the motion for relief.

In the result, the application for amendment is dismissed with costs.

Order accordingly..

*Application for amendment  
dismissed with costs.*