

1986 December. 20

[LORIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

VRYONAS PAPAMICHAEL,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMISSION,

Respondent.

(Case No. 1018/85).

Recourse for annulment—Revocation of sub judice act—When applicant entitled to judgment on the merits.

Educational Officers —Transfers —The Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) Regulations 1985 (71/85) 5
—Ultra vires enabling law.

The sub judice transfers of the applicant, an Elementary Education Schoolmistress, were made in 1985 pursuant to the aforesaid Regulations and, following the decision in *Aristides v. The Republic* (1986) 3 C.L.R. 466, declaring the said Regulations as ultra vires the enabling law, were revoked in April, 1986. 10

Held, annulling the sub judice decisions: (1) Despite the revocation of a sub judice act, a recourse has to be examined on its merits, if the act revoked has brought about consequences in relation to which, if the applicant is successful, he might be entitled to redress under Article 146.6 of the Constitution. In this case the applicant, if successful, might be entitled to such redress. 15

(2) This Court is in full agreement with the decision in *Aristides*, supra. It follows that the sub judice decisions have to be annulled. 20

Sub judice decisions annulled.
No order as to costs.

Cases referred to:

- Aristides v. The Republic* (1986) 3 C.L.R. 466;
Kyriakides v. Republic, 1 R.S.C.C. 66;
5 *Malliotis v. The Municipality of Nicosia* (1965) 3 C.L.R.
75 at p. 94;
Christodoulides v. Republic (1978) 3 C.L.R. 193;
Hapeshis v. Republic (1979) 3 C.L.R. 550;
Kittou v. Republic (1983) 3 C.L.R. 605;
Agrotis v. Republic (1983) 3 C.L.R. 1397;
10 *Kampis v. Republic* (1984) 1 C.L.R. 314 (FB);
Anastassiades and Others v. Republic (1984) 3 C.L.R. 312;
Kikas and Others v. Republic (1984) 3 C.L.R. 852;
Payiatas v. Republic (1984) 3 C.L.R. 1239 (FB);
Salem v. The Republic (1985) 3 C.L.R. 453;
15 *Vakis v. Republic* (1985) 3 C.L.R. 534;
Philippides and Son v. Republic (1985) 3 C.L.R. 2588.

Recourse.

20 Recourse against the decisions of the respondent to transfer applicant from Limassol to Ayios Mamas (Limassol), from Ayios Mamas to Limnati and from Limnati to Ayios Ioannis (Agrou).

A. S. Angelides, for the applicant.

A. Vassiliades, for the respondent.

Cur. adv. vult.

25 LORIS J. read the following judgment. The applicant, an Elementary Education Schoolmistress, by means of the present recourse challenged the decisions of the respondent Commission dated 23.8.85, 12.9.85 and 5.10.85 whereby she was transferred from Limassol to Ayios Mamas (Li-

massol) from Ayios Mamas to Limnati and from Limnati to Ayios Ioannis (Agrou).

The present recourse was filed on 3.12.85; its main legal ground was that the sub judge decisions were relying on the Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) (Amendment) Regulations 1985 (Regulations 71/85), which were allegedly ultra vires the enabling enactment. 5

Before the completion of the hearing of the present recourse the aforesaid Regulations and in particular regulations 20(c) and 23(2) were declared by the learned President of this Court on 12.3.86 in the case of *Aristides v. The Republic* (1986) 3 C.L.R. 466 as ultra vires the enabling law; following the judgment aforesaid the respondent revoked the sub judge decisions on 23.4.86. 10 15

Learned counsel for applicant submitted that the applicant was entitled to judgment on the merits in spite of the revocation of all three sub judge decisions as allegedly the administrative acts in question have produced detrimental results to her before ceasing to be effective, for which she was entitled to compensation. 20

It is well settled that despite the revocation of an administrative act a recourse has to be examined on its merits if the sub judge decision revoked has brought about consequences in relation to which, if the applicant is successful in the recourse he might be entitled to redress under Article 146.6 of the Constitution (*Kyriakides v. Republic*, 1 R.S.C.C. 66, *Malliotis v. The Municipality of Nicosia* (1965) 3 C.L.R. 75 at p. 94, *Christodoulides v. Republic* (1978) 3 C.L.R. 193, *Hapeshis v. Republic* (1979) 3 C.L.R. 550, *Kittou v. Republic* (1983) 3 C.L.R. 605, *Agrotis v. Republic* (1983) 3 C.L.R. 1397, *Kampis v. Republic* (1984) 1 C.L.R. 314 (FB), *Anastassiades & others v. Republic*, (1984) 3 C.L.R. 312, *Kikas and Others v. Republic* (1984) 3 C.L.R. 852, *Payiatis v. Republic* (1984) 3 C.L.R. 1239, *Salem v. The Republic* (1985) 3 C.L.R. 453, *Vakis v. Republic* (1985) 3 C.L.R. 534, *Philippides & Son v. Republic* (1985) 3 C.L.R. 2588). 25 30 35

Having considered the submission I decided that the sub judge decisions (23.8.85, 12.9.85 and 5.10.85) which were revoked as late as the 23.4.86, might entitle the applicant to redress under Article 146.6 of the Constitution if she was successful in the present recourse, so I heard further argument on the merits.

It is abundantly clear that the sub judge decision was based mainly on Regulation 23(2) of the Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) (Amendment) Regulations 1985, which was declared ultra vires by the learned President of this Court in the case of *Aristides v. The Republic (supra)*; I am in full agreement with the learned President that the aforesaid Regulation is ultra vires the enabling enactment and I adopt his reasoning in the aforesaid judgment to this end.

In the result the sub judge decisions are hereby declared null and devoid of any legal effect.

In view of the fact that the sub judge decisions were given on 23.8.85, 12.9.85 and 5.10.85 and the relevant Regulations were declared ultra vires the enabling Law by the Court on 12.3.86 I have decided to make no order as to the costs of this case, as the respondent Commission had to apply the regulations in question at the time it was reaching at the sub judge decision.

*Sub judge decisions annulled.
No order as to costs.*