

1983 May 28

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

IOANNA PANAYIOTOU HADJICHARALAMBOUS,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTRY OF EDUCATION AND/OR
THE MINISTER OF EDUCATION,
2. THE EDUCATIONAL SERVICE COMMISSION,

Respondents.

(Case No. 384/81).

Administrative Law—Annulling decision of this Court—In re-considering matter and in the absence of new facts the Administration is bound by it.

5 *Acts or decisions in the sense of Article 146 of the Constitution—Renewal of a contract of appointment of an educationalist in the Technical Education—As the purpose of the original appointment was to serve the needs of public educational service, the renewal comes within the domain of public law.*

10 The applicant, who had served by appointment on special contract to the post of Instructress in Technical Education from October, 1976 till August 1980 was not re-appointed for the school-year 1980-1981 and there was appointed, instead of her, the interested party.

15 Upon recourse by the applicant, this Court annulled* the appointment of the interested party on the ground that the respondent Commission had to follow Decision 19.509

* HadjiCharalambous v The Republic (1981) 3 C.L.R. 309.

of the Council of Ministers whereby it was decided that the contracts of all schoolmasters, who were serving on contract during the previous year, should be renewed.

As a result the respondent Commission reconsidered the matter, but once again re-appointed for the period in question the interested party and went on to say that as the applicant had been appointed in the past by means of a special contract between her and the Director-General of the Ministry of Education, the Commission could not take a decision about the renewal of the appointment. 5 10

Hence the present recourse, challenging both the refusal to re-appoint the applicant and the decision to appoint the interested party.

Held, annulling the sub judice decision: (1) As applicant's appointment on contract was made for the purpose of meeting needs of the public educational service, the matter of re-appointment on contract comes within the domain of public law. 15

(2) As no new facts were placed before it, the respondent Commission, in reconsidering the matter, had to comply with the aforesaid annulling decision, whereby it was held that applicant's special contract should have been renewed as a result of decision 19.509 of the Council of Ministers. 20

(3) The view that the Commission could not renew the contract is entirely erroneous. 25

(4) Even though the Commission stated that the interested party was better qualified than the applicant, this Court reached the conclusion that had the Commission felt bound by the aforesaid annulling decision and had it not taken the erroneous view that it could not renew applicant's contract, it would not have appointed the interested party in the place of the applicant. 30

Sub judice decision annulled.
Republic to pay £25.- costs. 35

Cases referred to:

HadjiCharalambous v. The Republic (1981) 3 C.L.R. 309;

Paschalidou v. The Republic (1969) 3 C.L.R. 297;

Ioannou v. The Republic (1979) 3 C.L.R. 423;

5 *Ioannou v. The Republic* (1983) 3 C.L.R. 150;

Constantinou v. The Republic (1972) 3 C.L.R. 116.

Recourse.

10 Recourse against the decision of the respondents to appoint on contract, for the school-year 1981 - 1982, the interested party to the post of Instructress in Technical Education in preference and instead of the applicant.

A. S. *Angelides* with C. *Pamballis*, for the applicant.

G. *Constantinou* (Miss), Counsel of the Republic, for the respondents.

15 *Cur. adv. vult.*

20 TRIANTAFYLIDIS P. read the following judgment. By means of the present recourse the applicant challenges, in effect, the appointment on contract, for the school-year 1981 - 1982, to the post of Instructress in Technical Education of Christina Markidou (to be referred to hereinafter as the "interested party"). The applicant, also, complains about the failure to renew in respect of the said school-year her own appointment on contract.

25 The applicant had served by appointment on special contract to the post of Instructress from October 1976 till August 1980. Then the applicant was not appointed for the school-year 1980 - 1981 and there was appointed, instead of her, the interested party.

30 The applicant filed recourse No. 412/80 and by means of the judgment delivered in it by my learned brother Mr. Justice A. Loizou the appointment of the interested party was annulled (see *HadjiCharalambous v. The Republic*, (1981) 3 C.L.R. 309); and it is very useful to quote the following passage from his judgment (at pp. 312, 313):

“It appears from the aforesaid and in particular from the fact that the agreement not to engage Educational Officers on Scales B. 1 and B. 2 and instead engage to the higher scales where higher academic qualifications were demanded, was not put into force that the only course in this case open to the respondents was to comply with the aforementioned Decision No. 19.509 of the Council of Ministers dated 14th September, 1980, whereby it had decided to renew the contracts of all school-masters of Secondary, General and Technical Education who were serving on contract during the previous year. If this decision was followed then, the applicant would have been engaged on contract. That was not done, obviously through a misconception as to the effect of the memorandum of agreement and its approval by the Minister by its decision of the 26th June, 1980.”

Then the respondent Educational Service Commission reconsidered the matter on the 16th October 1981 and the interested party was re-appointed once again on contract, instead of the applicant, retrospectively as from the 23rd October 1980. The Commission went on to state in its minutes that as the applicant had been appointed in the past by means of a special contract between her and the Director-General of the Ministry of Education the Commission could not take a decision about the renewal of the appointment of the applicant which had not been offered to her by the Commission.

I shall deal first with the submission of counsel for the respondents that the failure to appoint the applicant on contract is not a matter which could be challenged by this recourse under Article 146 of the Constitution because it comes within the domain of private, and not of public, law:

As the appointment of the applicant on contract had been made for the purpose of meeting needs of the public educational service I am of the opinion, in the light of case-law such as *Paschalidou v. The Republic*, (1969) 3 C.L.R. 297, *Ioannou v. The Republic*, (1979) 3 C.L.R. 423 and *Ioannou v. The Republic*, (1983) 3 C.L.R. 150,

that the matter of her re-appointment on contract for the same purpose comes within the domain of public law and, therefore, the failure of the respondent Commission to re-appoint her could be challenged by means of the present recourse under Article 146 of the Constitution.

As was found in the *HadjiCharalambous*, case, supra, there had to be compliance with decision No. 19.509 which was taken by the Council of Ministers on the 14th September 1980 and by which it was decided to re-appoint all educationalists who had been serving on contract in Secondary and Technical Education during the previous years. Then, by its subsequent decision No. 20.521 of the 25th June 1981 the further renewal of their contracts for another school-year was decided by the Council of Ministers.

Counsel for the respondents has argued that special contracts, such as that of the applicant, were not covered by the said decisions of the Council of Ministers and, therefore, could not be renewed.

Since by the judgment in the *HadjiCharalambous* case, supra, it was decided that the special contract of the applicant should have been renewed as a result of decision No. 19.509 of the Council of Ministers and as no appeal was filed against such judgment I am of the opinion that the *HadjiCharalambous* case, supra, was binding on the respondent Commission when it re-examined the case of the applicant on the 16th October 1981 (see, inter alia, in this respect, *Constantinou v. The Republic*, (1972) 3 C.L.R. 116).

As the sub judice decision of the respondent Commission was reached on the 16th October 1981 after a re-examination of the matter on the basis of the situation existing at the time when there had been reached its earlier decision which was annulled as a result of the previous recourse of the applicant (the *HadjiCharalambous* case, supra) and as no new facts were placed before it, the Commission had to comply with the judgment in the *HadjiCharalambous* case and renew the appointment on contract of the applicant; and the view that the Commission could not renew a contract which was executed between the Director-

General of the Ministry of Education and the applicant is entirely erroneous because the Commission had, first, to decide about the appointment afresh of the applicant on contract and then a new formal contract would have been entered into with the applicant in respect of the school-year 1981 - 1982 as it had been done on the previous occasion. 5

Even though the respondent Commission has stated in its minutes for the 16th October 1981 that it appointed on contract the interested party instead of the applicant because it found the interested party to be better qualified than the applicant it seems to me that had the Commission felt bound, as it ought to have felt bound, by the aforementioned decision of the Council of Ministers and the judgment in the *HadjiCharalambous* case, supra, to re-appoint the applicant on contract and, also, had the Commission not taken erroneously the view that it could not decide itself to renew the appointment on contract of the applicant, it would not have appointed the interested party on contract instead of the applicant. 10 15

In the light, therefore, of all the foregoing both the decision of the Commission not to appoint the applicant and the inextricably connected with it appointment of the interested party have to be annulled. 20

In the light of the particular circumstances of this case I have decided to order the Republic to pay £25.- by way of costs to the applicant. 25

*Sub judice decision annulled.
Republic to pay £25.- costs.*