

1986 February 17

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146

OF THE CONSTITUTION

CHRISTOS SAVVA,

Applicant.

v.

THE CYPRUS ELECTRICITY AUTHORITY,

Respondent.

(Case No. 367/82).

The Public Corporations (Regulation of Personnel Matters) Law 61/70, s.3—Promotions—Relevant Regulations neither approved by the Council of Ministers nor published in the Official Gazette—Said regulations invalid—Scheme of service—It is a form of subsidiary legislation—It cannot be challenged directly by a recourse, but only through an administrative act—The combined effect of the Electricity Development Law, Cap. 171 and s.3 of Law 61/70 is that a scheme of service should be approved by the Council of Ministers—But it need not be published.

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Two vacancies in the post of Engineer's Technical Assistant in the Mechanical Maintenance Department of the respondent's were advertised on 3.2.1982, and both the applicant and the interested party applied for such post.

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The Joint Advisory Selection Committee (J.A.S.C.) for promotions and regrading recommended five of the candidates, in alphabetical order, amongst whom the applicant and the interested party, as suitable for promotion to the post in question.

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The sub committee of the Authority on staff matters at its meeting of the 1st June, 1982, proposed to the Au-

thority two candidates out of those so recommended that is, the interested party and another, for the filling of the two vacancies.

5 The Authority finally, at its meeting of the 11th June, 1982, decided to promote the two candidates proposed by its sub committee, hence the present recourse.

10 *Held, annulling the sub judice decision:* (1) The Regulations establishing the procedure followed by the respondents in the present case were neither approved by the Council of Ministers nor published in the Official Gazette. As it has been held in a number of cases such regulations are invalid. The fact that the procedure before the J.A.S.C. has been introduced by a Collective Agreement is immaterial because such agreement cannot find
15 force in administrative law unless adopted as part of Regulations properly promulgated. The sub judice promotion is null and void as having been taken under an invalid procedure based on non-existent in law regulations.

20 (2) A scheme of service constitutes in effect subsidiary legislation and as such it must comply with the enabling law, which in this case is Cap. 171 in conjunction with section 3 of Law 61/70. The combined effect of these two enactments is that the scheme of service, being a form of subsidiary legislation, must receive the approval
25 of the Council of Ministers. The scheme of service need not be published. The scheme of service in question in this case has not been approved in its final form by the Council of Ministers. Though a scheme of service being an act of legislative nature cannot be challenged directly
30 by a recourse, it can be challenged through an administrative act as was in the present case.

35 (3) A sub-committee of the Board of the Authority is not an independent organ but part and parcel of the Board itself. It is, however, desirable that the procedure through a sub-committee should be regulated by regulations.

*Sub judice decision annulled.
£60.- costs in favour of applicant.*

Cases referred to:

- Kofteros v. The E.A.C.* (1985) 3 C.L.R. 394;
- Sophocleous v. The E.A.C.* (1984) 3 C.L.R. 1089;
- Petroudes v. The E.A.C.* (1985) 3 C.L.R. 2245;
- Arsalides v. C.Y.T.A.* (1983) 3 C.L.R. 510; 5
- Ploussiou v. Central Bank* (1983) 3 C.L.R. 398;
- Fanis v. C.B.C* (1985) 3 C.L.R. 775;
- Samouel v. C.B.C.* (1985) 3 C.L.R. 1574;
- Kontemeniotis v. C.B.C.* (1982) 3 C.L.R. 1027;
- Evrripides v E.A.C.* (1982) 3 C.L.R. 850; 10
- Kyriacou v. E.A.C.* (1985) 3 C.L.R. 1157;
- Makris v. The Republic* (1985) 3 C.L.R. 1103;
- PA.SY.DY. v. The Republic* (1978) 3 C.L.R. 27.

Recourse.

Recourse against the decision of the respondent to promote the interested party to the post of Engineer's Technical Assistant in the Electricity Authority of Cyprus in preference and instead of the applicant. 15

A. Panayiotou, for the applicant.

G. Cacoyannis, for the respondent. 20

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicant challenges, by the present recourse, the decision of the respondents communicated to him on 30.6.1982, whereby the interested party, Michael Frantzis, was promoted to the post of Engineer's Technical Assistant in preference to the applicant. 25

The applicant was holding, prior to the sub judice decision, the post of Foreman in the Electricity Authority of

Cyprus (E.A.C.), whilst the interested party that of mechanical fitter.

5 Two vacancies in the post of Engineer's Technical Assistant in the Mechanical Maintenance Department were advertised on 3.2.1982, and both the applicant and the interested party applied for such post.

10 The Joint Advisory Selection Committee for promotions and regrading (J.A.S.C.) considered the applications and submitted, on the 18th May, 1982, its report to the respondent, by which it recommended five of the candidates, in alphabetical order, amongst whom the applicant and the interested party, as suitable for promotion to the post in question.

15 The sub committee of the Authority on staff matters at its meeting of the 1st June, 1982, proposed to the Authority two candidates out of those recommended by the J.A.S.C., that is, the interested party and another, for the filling of the two vacancies.

20 The Authority finally, at its meeting of the 11th June, 1982, decided to promote the two candidates proposed by its sub committee, hence the present recourse.

Counsel for applicant argued his case on the grounds that:

25 (a) The procedure followed by the Authority in deciding the sub judge promotion is contrary to Law, in that the regulations on which it was based are illegal and/or legally unfounded. In expounding on this ground, counsel for applicant argued that the regulations regarding the J.A.S.C. have neither been approved by the Council of Ministers, nor been published in the official Gazette of the Republic, as
30 provided by the Law, and are, therefore, invalid. Counsel further contended that the procedure before the sub-committee is invalid in that there is no provision either in the Law or the Regulations, about the establishment of such committee. Furthermore, that the selection of the two
35 appointees was in fact made by the three members of the Board of the Authority acting as a sub-committee, as it selected and recommended for appointment only the two candidates who were finally appointed by the Board of the Authority.

(b) I. The interested party does not possess the qualifications required under the scheme of service.

II. That the scheme of service, as amended, is invalid as such amendment has not been approved by the Council of Ministers. 5

III. Contrary to the principles of good administration the interested party was promoted by more than one grade at the same time.

(c) The respondent acted in abuse of power by ignoring the seniority, experience and merit of the applicant. 10

(d) The sub judge decision was taken under a misconception of law and fact.

(e) The sub judge decision is not duly reasoned.

Counsel for the respondents, on the other hand, contended that the respondent exercised its powers on the basis of the law and that the alleged regulations were only internal rules of the respondent which are not subject to approval by the Council of Ministers. Furthermore that the procedure before the J.A.S.C. was followed in compliance with a collective agreement between the Authority and the Trade Unions of its employees made in 1974-1975. 15 20

With regard to the role of the sub committee counsel for the respondent argued that it is not an independent organ but part of the Authority and can function independently of any regulations. Moreover it did not purport to assume or exercise the powers of the Board of the Authority and its role is only to make proposals which are not binding on the Authority. 25

The question of the validity of the said regulations has been the subject matter of a number of recourses before this Court. 30

Thus, in the case of *Kofteros v. The Cyprus Electricity Authority* (1985) 3 C.L.R. 394, the promotions challenged were annulled on the ground that they were made pursuant to a set of regulations (the same as in the present case) which never received the approval of the Council of Ministers 35

and were not published in the official Gazette of the Republic. Stylianides, J. in delivering his judgment after making reference to the history of the law said the following at page 401:

5 “Article 61 of the Constitution provides that ‘the legislative power of the Republic shall be exercised by the House of Representatives in all matters....’ The House of Representatives may delegate its power to legislate to other organs or bodies in the Republic
10 within the accepted principles of constitutional law. This was done in respect of the authorities by s.3 of Law 61/70. However, for the validity of rules or regulations made under the aforesaid enabling power
15 the approval of the Council of Ministers and the publication in the Official Gazette are necessary.”

The learned Judge then finally concluded at page 403, as follows:

20 “It was submitted by counsel for the respondents that their publication was not necessary as they were simply internal rules. Reliance was placed on *Constantinou v. CY.T.A.*, (1980) 3 C.L.R. 243, at pp. 252 - 253. *Constantinou* case is a judgment of a Judge of co-ordinate jurisdiction. It was not followed in *Arsalides and Another v. CY.T.A.* and in *Christos Sofocleous v. The Electricity Authority of Cyprus*
25 Case No. 232/82 - unreported). Appeal was taken against the decision in *Constantinou* case. The sub judice decision was revoked by agreement of the parties and sanction of the Court and the respondent
30 Authority undertook to reconsider the matter. The effect of *Constantinou* case was extinguished by the outcome of the appeal which was sanctioned by the Full Bench of the Supreme Court.

35 The sub judice decision for promotion of the interested party is null and void as taken under non-existent in Law rules or regulations.”

An appeal filed against the judgment in *Kofteros* case (supra) was in the course of hearing before the Full Bench withdrawn and the findings of the trial Judge remained

undisturbed. The same view was also expressed by Pikis, J. in the case of *Sophocleous v. E.A.C.* (1984) 3 C.L.R. 1089. and *Petroudes v. The E.A.C.* (Case No. 360/84) in which judgment was delivered on 23.11.1985*, still unreported) in respect of regulations concerning personnel matters of the E.A.C. 5

It has also been held that similar regulations made by other public corporations were invalid for the same reasons, that is, for non-approval or non-publication (see in this respect the cases of *Arsalides v. C.Y.T.A.* (1983) 3 C.L.R. 510; *Ploussiou v. Central Bank* (1983) 3 C.L.R. 398; *Fanis v. The C.B.C.* (1985) 3 C.L.R. 775; *Samouel v. The C.B.C.* (1985) 3 C.L.R. 1574). 10

The fact that the procedure before the J.A.S.C. has been introduced by the Collective Agreement is immaterial because such agreement cannot find force in administrative law unless adopted as part of the Regulations properly promulgated (see *Kontemeniotis v. C.B.C.* (1982) 3 C.L.R. 1027). 15

As to the nature and function of the sub committee of the Board of the Authority I adopt what I have said in the case of *Evipides v. E.A.C.* (1982) 3 C.L.R. 850, to the effect that a sub committee of the Board is not an independent organ but part and parcel of the Board of the Authority itself, (See also the case of *Kyriacou v. E.A.C.* (1985) 3 C.L.R. 1157). 20 25

I hold, however, the view that in the interest of justice and the principles of good administration it is desirable that the procedure through a Sub-Committee of the Board should also be regulated by regulations. 30

For all the above reasons I have come to the conclusion that the sub judice decision for the promotion of the interested party is null and void, as having been taken under an invalid procedure which was based on non-existent in law rules or regulations. 35

Notwithstanding the fact that my above conclusion dis-

* Reported in (1985) 3 C.L.R. 2245

poses of the case, I find it necessary to deal briefly with certain other points raised in this recourse.

5 The first point is that concerning the scheme of service for the post in question. From the material before me it appears that the scheme of service in its final form has not been approved by the Council of Ministers, but by the Board of the Authority. In the notification for the existence of vacancies (exhibit 1 annexed to the opposition), the following are stated at p. 2 concerning the scheme of
10 service.

15 “The schemes of service for the posts of Engineer’s Assistant I, Engineer’s Assistant III and Engineer’s Technical Assistant *have been amended by the Authority* with the addition of the following paragraph which will be in force for the period from 1.1.1982 until 31.12.1982.” (The underlining is mine.)

20 It has been held by this Court time and again that the schemes of service constitute in effect subsidiary legislation and as such they must comply with the provisions of the enabling law (see the cases of *Ploussiou v. Central Bank* (supra) at pp. 407 - 408).

25 The enabling law in the present case is, Cap. 171, in conjunction with section 3 of Law 61/70. The combined effect of these two is that the scheme of service, being a form of subsidiary legislation must receive the approval of the Council of Ministers.

As to the necessity for the publication of schemes of service, it has been held in the case of *Makris v. The Republic* (1985) 3 C.L.R. 1103, at p. 1111, that:

30 “Before concluding I would like to refer to another point made by counsel for applicant in his reply to the address of counsel for the respondents to the effect that the scheme of service in question was not published in the official Gazette of the Republic and was thus invalid. With regard to this I need only say
35 that although the publication of schemes of service in the Gazette is advisable and useful for general in-

formation (see *Iler Ishin v. The Republic*, 2 R.S.C.C. 16 at p. 20) it is not essential for their validity. (See *Economides v. The Republic* (1972) 3 C.L.R. 506 at pp. 516 - 517)."

The contention of counsel for the respondents that the scheme of service being an act of a legislative nature cannot be challenged by a recourse, cannot be sustained. The correct position is that it cannot be challenged directly by a recourse but only through an administrative act, as has happened in the present case (see the case of *PA.SY.DY. v. The Republic* (1978) 3 C.L.R. 27). 5 10

In the result, this recourse succeeds and the sub judice decision is hereby annulled with £60.- costs in favour of the applicant.

Sub judice decision annulled. 15
Respondent to pay £60.- costs.