1987 February 13

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MAROULLA EROTOCRITOU THEMISTOCLEOUS,
Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE EDUCATIONAL SERVICE COMMISSION,
2. THE MINISTRY OF EDUCATION,
3. THE COUNCIL OF MINISTERS,
Respondents.

(Case No. 816/85).

The facts of this case are similar to the facts in *Sarris v. The Republic* (1987) 3 C.L.R. 186, that is the respondent Commission, adopting the relevant decision of the Council of Ministers and the recommendations of the Minister of Education, appointed the interested parties on contract as teachers of Chemistry, notwithstanding applicant's priority in accordance with the list, compiled in virtue of regulations 5 and 10 of The Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) Regulations*

Held, that the sub judice decision has to be annulled on the same grounds as those expounded in *Sarris v. The Republic* (1987) 3 C.L.R. 186.

Sub judice decision annulled.
No order as to costs.

Cases referred to:

Sarris v. The Republic (1987) 3 C.L.R. 186;

PapaKyriacou v. The Republic (1983) 3 C.L.R. 870.

* *Regulations 5 and 10 were declared as «ultra vires» the enacting law in Savva v. The Republic (1986) 3 C.L.R. 445*

Recourse.

Recourse against the decision of the respondents to appoint the interested parties on contract to the post of teacher of Chemistry in preference and instead of the applicant.

A.S. Angelides, for the applicant.

R. Vrahimi-Petridou (Mrs.), for the respondents.

Cur. adv. vult.

SAVVIDES, J. read the following judgment. By the present recourse the applicant challenges the decision of respondent 1 to appoint on contract the interested parties, namely, Georghia Kazantzi, Maria Fotsiou, Elisavet Tembriotou, Athanassia Nicolaidou and Andreas Stavrinakis to the post of teacher of Chemistry. The recourse is directed against the Educational Service Commission, respondent 1, who effected the appointment, the Ministry of Education, respondent 2, and the Council of Ministers, respondent 3. Respondents 2 and 3 were added, in view of the fact that in his prayer for relief, counsel for applicant prays also for a declaration that the direction given by respondents 2 and 3 to respondent 1 to appoint or re-appoint the said interested parties on contract is illegal and/or in abuse of powers.

The facts of the case are briefly as follows:

The applicant is a graduate of Chemistry. During the years 1972-1976 she worked in private schools and as from 1978 till recently she was casually employed by the Public Works Department on an hourly basis. The name of the applicant appeared under Serial No.10 on the list of candidates eligible to be appointed as teachers which was prepared by respondent 1 in July, 1985, pursuant to Regulation 5 of the Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) Regulations of 1972 (see Not.205, Third

Supplement Part I to the official Gazette of the Republic dated 10th November, 1972) as amended, in particular by the Amending (No 2) Regulations of 1974 (See Not 250/74)

By its decision dated the 30th August, 1985, (the sub judice decision) the respondent Commission appointed the five interested parties on contract as teachers of Chemistry for a period of three months The serial numbers of the interested parties were 13 14, 28, 29 and 30 respectively In fact, the said interested parties had also been appointed on yearly contracts for the school years 1983-1984 and 1984-1985 The applicant, as a result, filed the present recourse challenging such decision

The appointment of interested parties 3, 4, and 5, namely, Tembriotou, Nicolaidou and Stavrinakis was the subject matter of another recourse, No 940/85, *Sarris v The Republic*, dealt with by me, in which judgment was delivered on the 27th January, 1987*, whereby the decision challenged was annulled on the ground that respondent 1 in making the appointments in question failed to carry out a due inquiry and to exercise its discretion properly

The arguments advanced by both counsel are the same as those in Case No 940/85 and I need not deal at length with them The questions which pose for consideration are

(1) Whether respondent 1 was bound to apply the Regulations and follow the priority on the list of candidates for appointment which was set up in accordance with the Regulations, and

(2) Whether respondent 1 properly exercised its own discretion in the matter, or whether the sub judice decision was a mere adoption of the decision of the Council of Ministers and/or the Minister of Education

These questions have been dealt with by me in Case No 940/85, *Sarris v The Republic* by which the same decision was challenged and I find it unnecessary to expound, once again, on the same matters as what I have said in that case apply mutatis mutandis in the present case and is fully adopted by me I wish, however, to repeat my reference in the said case to the dicta in

* *Reported in (1987) 3 C L R 186*

Papakyriacou v. The Republic (1983) 3 C.L.R. 870 at pp. 881, 882, as follows:

«Therefore the Council of Ministers in deciding who should be appointed exceeded their powers. Their suggestion for filling the post by the renewal of existing contracts ought to be disregarded by the respondents. Far from disregarding them, the respondents approved the recommendation of the Council of Ministers in this respect and appointed officers who were serving during the preceding year on a contractual basis. They acted contrary to the provisions of the law, notably s.5(1), making them in the absence of provision to the contrary the sole judges of who should be appointed. This duty they failed to carry out completely. They failed to exercise any discretion in the matter. They merely rubber stamped the decision of the Council of Ministers.»

In short the answer to the first question is that respondent 1 was bound to apply the Regulations so long as they had not been repealed or declared void and null by any competent court.

Concerning the second question, respondent 1 instead of carrying its own enquiry and exercising its discretion in the matter, on the basis of the relevant material before it, merely rubber-stamped the decision of the Council of Ministers and the recommendations of the Minister of Education. Therefore the sub judice decision has to be annulled.

In the result the sub judice decision is annulled with no order for costs.

Sub judice decision annulled.
No order as to costs.