

1987 February 12

[TRIANAFYLIDIS P MALAHTOS SAVVIDES IORIS KOURRIS JJ]

ANTONIS MELETIS AND OTHERS,

*Appellants-Applicants.*

v

1 THE CYPRUS PORTS AUTHORITY  
2 THE COUNCIL OF MINISTERS,

*Respondents*

*(Revisional Jurisdiction Appeal No 557)*

*Legitimate interest — Promotions — Candidates not possessing qualifications required by scheme of service — Do not possess a legitimate interest to challenge promotions thereunder, unless and to the extent they dispute the validity of the scheme, by reason of which they had been excluded from being considered for promotion*

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*Acts or decisions in the sense of Art 146 1 of the Constitution — Scheme of service — An act of legislative nature — It cannot be challenged directly by a recourse — But it can be challenged indirectly by a recourse impugning the validity of the result of its application*

This appeal is directed against a judgment of a Judge of this Court, whereby appellants' recourses, impugning the validity of the promotion of the interest parties to the post of Senior Ports Officer, were dismissed

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The relevant scheme of service is to be found in Reg 24 of the Cyprus Ports Authority (Officers' Scheme of Service and Other Conditions of Service) Regulations, 1982

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The appellants dispute the validity of the said Regulation

The question of appellant's legitimate interest was raised

Held, *on such question* (1) A person who is not qualified for promotion to a post does not have a legitimate interest entitling him to challenge the promotion of another to such post

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(2) A scheme of service is an act of legislative character and cannot be challenged directly as such by a recourse under Article 146 but it can be challenged indirectly by means of a recourse made against the result of its application such as a promotion or an appointment made in accordance with it

(3) Once the applicants have challenged the promotions on the ground that the scheme of service is invalid they do possess a legitimate interest entitling them to pursue these proceedings to the extent of having a judicial determination regarding the validity of the said scheme of service

*Order accordingly*

*Cases referred to*

*Philippou v The Republic*, 4 R 5 C C 139,

*Panayides v The Republic* (1972) 3 C L R 135,

*Sofocleous (No 2) v The Republic* (1972) 3 C L R 537

*Paraskevopoulou v The Republic* (1980) 3 C L R 647,

*Komodromou v The Republic* (1985) 3 C L R 2250

*Nicolaou v The Republic* (1985) 3 C L R 2471,

*Makns v The Republic* (1986) 3 C L R 10,

*Savva v The Cyprus Electricity Authority* (1986) 3 C L R 80

## 20 Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Stylianides, J) given on the 17th January 1986 (Revisional Jurisdiction Case 103/83)\* whereby appellants' recourse against the decision to promote the interested parties to the post of Senior Ports Officer in the Cyprus Ports Authority was dismissed

*A S Angelides*, for the appellants

*P Ioannides*, for respondent 1

*A Vassiliades*, for respondent 2

*Cur adv. vult*

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\* Reported in (1986) 3 C L R 418

TRIANTAFYLIDIS P. read the following decision of the Court. By means of this appeal the appellants have appealed against the first instance judgment of a Judge of this Court by virtue of which there was dismissed their recourse No. 103/83 under Article 146 of the Constitution. 5

This appeal has been withdrawn, and it is dismissed accordingly, in so far as it relates to related case No. 104/83.

By their said recourse the appellants challenge, in effect, the validity of the promotion to the post of Senior Ports Officer, in the service of respondent 1, of fifteen Ports Officers, 1st Grade, (to be referred to hereinafter as the «interested parties»). 10

It is common ground that at the material time the appellants were also Ports Officers, 1st Grade, in the service of respondent 1, having been promoted to such post at the same time as the interested parties. 15

It is not disputed that the appellants did not possess the qualifications for promotion to the post of Senior Ports Officer.

Such qualifications are set out in the relevant scheme of service which is to be found in regulation 24 of the Cyprus Ports Authority (Officers' Schemes of Service and Other Conditions of Service) Regulations, 1982 (see No. 317, Third Supplement, Part I, to the Official Gazette of 30 December 1982). 20

It is well settled that a person who is not qualified for promotion to a post does not have a legitimate interest entitling him to challenge the promotion of another to such post; and in this respect useful reference may be made to, inter alia, *Philippou v. The Republic*, 4 R.S.C.C. 139, 140, *Panayides v. The Republic*, (1972) 3 C.L.R. 135, 141, *Sofocleous (No. 2) v. The Republic*, (1972) 3 C.L.R. 537, 539, *Paraskevopoulou v. The Republic*, (1980) 3 C.L.R. 647, 661, *Komodromou v. The Republic*, (1985) 30 3 C.L.R. 2250, 2258, 2259 and *Nicolaou v. The Republic*, (1985) 3 C.L.R. 2471, 2476, 2477.

Had the position been that the appellants were not disputing the validity of regulation 24, as a result of which they were excluded from consideration as candidates for promotion, they certainly would not have been entitled at all to maintain the present proceedings. 35

As the appellants are however disputing the validity of the said regulation 24 it has to be examined whether or not, at this stage of the proceedings, they should be treated as possessing a legitimate interest entitling them to file their present recourse, and to pursue  
5 this appeal against its dismissal, for the purpose of having a judicial pronouncement regarding their contention that regulation 24 is invalid for the grounds which have been set out in their recourse and have been argued before the trial Judge.

A scheme of service is an act of legislative character and cannot  
10 be challenged directly as such by a recourse under Article 146, even if it is not contained in subsidiary legislation such as Regulations 317/82 in the present instance, but a scheme of service, irrespective of whether it has been adopted by means of a decision of the Council of Ministers or whether it has come into  
15 force by means of subsidiary legislation, as in this case, can be challenged indirectly by means of a recourse made against the result of its application, such as a promotion or an appointment made in accordance with it (see, inter alia, in this respect, *Makris v The Republic*, (1986) 3 C L R. 10, 17, 18 and *Savva v The Cyprus Electricity Authority*, (1986) 3 C L R 80, 88)  
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Once, therefore, the appellants have chosen to challenge the promotions of the interested parties on the ground that the scheme of service which is contained in the aforementioned regulation 24, and as a result of which they have been excluded  
25 from consideration as candidates, is invalid, they do possess, in our opinion, a legitimate interest entitling them to pursue these proceedings to the extent of having a judicial determination regarding the validity of the said scheme of service, and, of course, if it is found that the scheme of service is valid then the appellants  
30 will immediately be deprived of a legitimate interest to pursue these proceedings any further, because the appellants would then have to be treated as having been properly excluded from consideration as candidates on the ground that they did not possess the necessary qualifications required by the relevant  
35 scheme of service

*Order accordingly*