

1987 March 27

[PIKIS J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PITSA ANTONIADOU

Applicant

v

1 THE CYPRUS THEATRICAL ORGANIZATION,
2 THE DIRECTOR OF CYPRUS THEATRICAL ORGANIZATION,
Respondents

(Case No 881/85)

5 *Misconception of fact—Appointments on contract of fixed duration of members of regular staff of the Cyprus Theatrical Organization—Casual employee preferred to a member of regular staff—Absence of report in respect of acting qualities of the person selected—The failure to ask for such a report left a lacuna in respondents' inquiry—In the light of such lacuna it is very probable that respondents misconceived the facts relevant to the acting qualities of the contestants*

10 A number of actors and actresses are employed on a contractual basis of fixed duration by respondents 1, a statutory body charged with the promotion of the theatrical ideal and the staging of theatrical productions. The contracts are as a rule renewed so much so that they are treated as the regular theatrical personnel of the Organization. In addition to the regular personnel, a number of actors and actresses are employed on a casual basis according to the requirements of the stage programme. Unlike regular actors they cannot look
15 to the renewal of their contracts as a matter of course.

20 The applicant had a long association with respondents. She was casually employed upto 1974, when her collaboration with the respondents was interrupted on account of her illness. When her health was restored, the collaboration was resumed. In May 1985 the applicant was appointed a regular member of the staff, having been selected from among four casual actors, including the interested party. Her contract was for five months so that its expiration would coincide with the expiration of the contract of the other regular actors and actresses.

25 In July, 1985 the Board of respondents 1 met to consider the needs of the Organization for the ensuing theatrical year. The matter was referred to the artistic committee for their views and advice. The said committee decided to

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recommend the engagement of all members of the regular staff except the applicant in whose place they recommended the interested party on account of better qualities and stage performance

No reports were asked and none was submitted on the acting qualities of the casual staff including the interested party who had been casually employed since 1980. Finally the Board of the respondent, guided by the advice of the artistic committee and the recommendations of the Director (respondent 2) decided to re-appoint all regular members except the applicant, in whose place they appointed the interested party

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The omission to submit a report on the interested party was not due to any lack of knowledge on behalf of the Director as to his qualities but to failure by the respondents to seek such information. The report made about the interested party for 1985/1986 hardly coincided with the picture that the Director painted in giving evidence. A comparison of this report with the report on applicant which was before the respondents reveals the applicant as marginally better

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Held *annulling the sub judice decision* (1) Had a report been prepared on the acting qualities of the interested party, it is unlikely that the respondents would have preferred the interested party to the applicant

(2) The failure of the respondents to seek from the most official source—their Director—a report on the acting qualities of the interested party left a lacuna in their inquiry as to the suitability of the two candidates in question

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(3) In the light of this gap in their inquiry, it is very probable that the respondents misconceived the facts relevant to the acting qualities of the two contestants

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*Sub judice decision
annulled No order as
to costs*

Recourse.

Recourse against the decision of the respondents to appoint on contract to the post of actor in the Cyprus Theatrical Organization the interested party in preference and instead of the applicant

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A Markides, for the applicant

L Koursoumba (Mrs), for the respondents

Cur. adv. vult 35

3 C.L.R. **Antoniadou v. Cyprus Theatrical Organization**

PIKIS J read the following judgment The Cyprus Theatrical Organization, known with its acronym (Greek) Θ Ο Κ , is a statutory body charged with the promotion of the theatrical ideal and the staging of theatrical productions It is managed by a Board
5 of Directors responsible for policy and overseeing of management, aided in the accomplishment of its cultural objectives by an artistic committee with an advisory role The Director is the chief executive organ of Θ Ο Κ

A number of actors and actresses are employed on a regular
10 basis for theatrical productions Though employed on a contractual basis of fixed duration, their contracts are as a rule renewed so much so that they are treated as the regular theatrical personnel of the Organization Regular actors and actresses are required to perform roles assigned to them from time to time
15 according to the exigencies of the theatrical programme In addition to the regular personnel, a number of actors and actresses are employed on what is described as a casual basis according to the requirements of the stage programme Casual personnel, too,
20 is employed on a contractual basis albeit for periods shorter than twelve months Unlike regular actors they cannot look to the renewal of their contracts as a matter of course

Pitsa Antoniadou, the applicant, had long co-operation with Θ Ο Κ. dating back to the early days of its formation She was casually employed for long periods of time upto 1974 when her
25 collaboration was interrupted on account of illness but was later resumed when her health was restored In May, 1985, the applicant was appointed member of the regular theatrical staff of the respondents in a vacancy that occurred with the departure of a member of the regular personnel She was chosen from among
30 four casual actors, including the interested party, namely Christos Christofakis. She was given a five-month contract expiring on 30/9/85 in order to coincide with the expiration of the contracts of the remaining 22 regular actors and actresses of Θ Ο Κ. So
35 applicant became one of the 23 regular actors and actresses of the Organization.

In July, 1985, the Board of the respondents met anew to consider the needs of the Organization for the ensuing theatrical year commencing in October, 1985 They requested the Director

to submit reports on the regular personnel and referred, in the first place, the matter of choice of personnel to the artistic committee for their views and advice. The Director reported to the artistic committee on the 23 regular members of the staff, reading over to them the reports he prepared on them in the prescribed form. In making their selection they considered, apart from regular personnel, ten other actors and actresses casually employed by Θ.Ο.Κ. Notwithstanding the co-operation of casual personnel with the Organization, no reports were asked and none was submitted on the acting qualities of the casual staff. The interested party, it must be noted, had been casually employed by Θ.Ο.Κ. since 1980.

The artistic committee decided to recommend the renewal of the contracts of all members of the regular staff with the exception of the applicant. For the 23rd post they recommended by majority the engagement of the interested party in the place of the applicant on the ground of better acting qualities and stage personality. The recommendations of the artistic committee, though of an advisory character constitute, as laid down in the Law*, a weighty factor to be duly born in mind by the Board in making its decision. Finally, the Board of the respondents met on 29/7/85 to make their selection. As in the case of the artistic committee, the Director confined his reports and evaluation on the 23 regular members of the staff. Guided by the reports of the Director and the recommendations of the artistic committee, the respondents decided, again by majority, to renew the contracts of all regular members with the exception of the applicant. In her place they appointed the interested party. The dissenting members supported the appointment of the applicant on the ground, inter alia, that the theatrical programme of the Organization required a female member.

The challenge of the applicant to the decision centres primarily on the inadequacy of the inquiry held by the respondents resulting in a misconception of the facts respecting the rival merits of the applicant and interested party. In evidence before me the applicant spoke of her long and, as she believed it to be, fruitful co-operation with Θ.Ο.Κ., and the variety of roles she performed on

**(see, s. 5(4)).*

stage over the years. Her exclusion from the permanent staff she regards as unfair and as an act of injustice to her theatrical qualities.

5 The Director, Mr. Evis Gavrielides, testified at the request of the respondents with a view to illuminating the background and circumstances leading to the sub judice decision. He was unable to give us further details to those indicated in the minutes of the respondents. Mostly, he tried to surmise the reasons that led to the appointment of the interested party in preference to the applicant. The omission to submit a report on the qualities of the interested party was not due to any lack of knowledge on his part as to his 10 qualities, but on the failure of the respondents to seek such information. Nonetheless, a report was prepared on the interested party the following year in the context of reporting upon regular actors and actresses of the Organization. As he told the Court the 15 report on the interested party for the years 1985 and 1986 also reflected the value of his services and acting qualities for the previous years. The report on the interested party hardly coincides with the picture Mr. Gavrielides painted of the acting qualities of the interested party. In the report he is portrayed as a mediocre 20 actor with little prospect for improvement. Furthermore, there is nothing on record to suggest that the choice of the interested party had anything to do with the needs of Θ.Ο.Κ. in terms of the sex of the regular personnel, a view ventured by Mr. Gavrielides as a possible reason for the choice of the interested party. In fact, some 25 members, as earlier noted, thought that a female actor was needed.

 Had a report been prepared on the acting qualities of the interested party, it is unlikely that the respondents would have preferred the interested party to the applicant. A comparison of 30 the two reports reveals the applicant as marginally better, at least so far as human relations are concerned, whereas the fact that she was a regular member of the staff would no doubt prima facie entitle her to preference, all other factors being equal. It becomes apparent that the failure of the respondents to seek from the most 35 official source — the Director — a report on the acting qualities of the interested party, left a lacuna in their inquiries on the suitability of the two candidates for selection. In view of this serious gap in their inquiry, it is very probable that they misconceived the facts relevant to the acting qualities of the two contestants. The only 40 way to remedy this inadequacy and, possibly, correct the

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misconception of facts, is to annul the decision and thus afford the respondents an opportunity to reflect on the matter anew after properly apprising themselves of all relevant facts.

Pursuant to the provisions of Article 146.4(b) of the Constitution the decision is hereby declared null and void and of no effect 5
whatsoever.

Let there be no order as to costs.

*Sub judice decision
annulled. No order
as to costs.* 10