

1987 May 9  
[STYLIANIDES J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS LOUCAIDES,

*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 784/85)*

*Administrative Law — General Principles — Delegated legislation — The Educational Officers (Teaching Staff) (Appointments, Postings Transfers, Promotions and Related Matters) Regulations 1972 — Regulations 5 and 10(2) declared by this Court, after the sub judice decision was taken as ultra vires the enabling law — Appointments of teachers in violation of the order of pronyty set out by Reg 10(2) — Legality of administrative act governed by the Law in force at the time it was taken — The arbiter of the validity of Regulations made under an enabling law is only the Court — The respondents, therefore, were bound to apply the aforesaid Regulations*

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*Administrative Law — Discretion of administration — It should be exercised freely, effectively, according to the Law and the principles of administrative Law, without reliance on extraneous considerations*

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*Administrative Law — General principles — Duty of administration to apply the law (Constitution, Statutes, Delegated Legislation) — The arbiter of the constitutionality of a law or the validity of Regulations made under an enabling Law is only the Court*

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The applicant's name was placed under senal number 17 and those of the interested parties under senal numbers 24, 33 40 41, 42 and 54 in the relevant list of pronyty compiled in virtue of Regulation 5 of the aforesaid Regulations

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By means of this recourse the applicant challenges the appointment on contract as Teachers of Physics for the period 1 9 85 - 30 11 85 of the

interested parties, made in violation of the order of priority set out by Reg 10(2)

5 It must be noted that in *Savva v The Republic* (1986) 3 C L R 445 the said Regulations 5 and 10(2) were declared ultra vires the enabling law. This decision was delivered on 8 3 86, whereas the sub-judice decision was taken on 30 8 85

10 Held, *annulling the sub-judice decision* (1) An administrative Authority must observe and apply the law (Constitution, Statutes and Regulations made thereunder). The arbiter of the constitutionality of a law and the validity of Regulations made under an enabling law is only the Court

15 (2) The legality of the sub-judice act is governed by the Regulations in force at the time it was made. The provisions of Reg 10(2) were mandatory. The applicant had priority over the interested parties. Their appointment flagrantly violates Reg 10(2). It cannot survive judicial scrutiny. The decision in *Savva case*, supra issued on 8 3 86 does not influence the legality of the sub-judice act or the outcome of this decision

20 (3) In the light of the above there is no need to dwell in depth with the complaint that the respondent commission failed to exercise its discretion, but it simply executed a directive of the Ministry. It suffices to observe that an Authority should exercise its discretion freely, effectively, according to the law and the principles of administrative Law, and not rely on extraneous considerations

*Sub-judice decision annulled*

*No order as to costs*

25 *Cases referred to*

*Savva v The Republic* (1986) 3 C L R 445,

*Kapsou v The Republic* (1983) 3 C L R 1336,

*Papakymacou v The Republic* (1983) 3 C L R 870

*Psara-Kronidou v The Republic* (1985) 3 C L R 1900,

30 *Kynakidou v The Republic* (1986) 3 C L R 913

### Recourse.

Recourse against the decision of the respondents to appoint on contract the interested parties as Teachers of Physics of Secondary Education from 1 9 85. - 30 11.85.

35 *A.S. Angelides*, for the applicant.

*R Petridou (Mrs.)*, for the respondents

*Cur. adv. vult*

STYLIANIDES J. read the following judgment. The applicant by this recourse challenges the appointment on contract of the 6 interested parties as Teachers of Physics of Secondary Education from 1.9.85 - 30.11.85.

Two grounds of law were raised by counsel for the applicant:- 5

(a) That the respondents acted contrary to Law, namely, Regulation 10(2) of the Educational Officers (Teaching Staff) (Emplacements, Transfers, Promotions and Related Matters) Regulations, 1972, as amended; and,

(b) That the respondents, contrary to Law, in taking the sub-judice decision simply executed a directive by the Ministry of Education. 10

The applicant and the interested parties are qualified Teachers of Physics and applied for appointment under the relevant Law and Regulations to the Ministry of Education. 15

A list of priority was prepared by virtue of Regulation 5. The applicant had priority over all the appointees, interested parties, being No. 17, whereas the interested parties were Nos. 24,33,40,41,42 and 54.

Regulation 10(2) provided:- 20

«Appointments on contract are made in order of priority from the relevant list of persons to be appointed».

Under Section 27 of the Public Educational Service Law, 1969 (No. 10 of 1969) a permanent post in the educational service is filled either permanently or temporarily on contract for a certain period or from month to month, as the Council of Ministers may decide. One of the modes of filling a temporary post is on contract, again as the Council of Ministers may decide. 25

The Council of Ministers on the submission of the Ministry of Education decided the filling of a number of posts on contract for three months as from 1.9.85. This decision was communicated to the respondent Educational Service Commission. 30

On 29th August, 1985, the respondent Commission addressed a letter to the Ministers of Education inquiring whether the intention of the Ministry was the appointment of those educationalists who were serving on contract in the school-year 1984-85, otherwise the Commission would be bound, according 35

to the existing legislation and having regard to a recent relevant decision of the Supreme Court, to proceed with appointment on contract of those who were entitled on the basis of the list.

5 The Ministry by letter requested the Educational Service Commission to appoint on contract those educational officers who were serving on contract during the school-year 1984-85, excluding replacements and wives of Greek officers for which a separate decision was taken in view of the fact that a Bill was expected to be introduced shortly to the House of  
10 Representatives.

On 30.8.85 the respondent Commission took the sub judge decision. They appointed on contract the 6 interested parties for 3 months as from 1.9.85 and disregarded the applicant.

15 On 8.11.85 the Educational Officers on Contract (Appointment to Post in the Public Educational Service) Law, 1985 (No. 161 of 1985) was enacted, section 3 of which provides:-

20 «3.-(1) Κατά παρέκκλιση από τις διατάξεις των περι Δημοσίας Εκπαιδευτικής Υπηρεσίας Νόμων του 1969 έως (Αρ. 2) του 1985 ή οποιουδήποτε άλλου Νόμου ή Κανονισμού ο οποίος αφορά στη δημόσια εκπαιδευτική υπηρεσία, σχετικά με τις μεθόδους και διαδικασίες πλήρωσης θέσεων στη δημόσια εκπαιδευτική υπηρεσία, η Επιτροπή δύναται κατ'εξουσία να προβαίνει σε διορισμούς εκπαιδευτικών λειτουργών με σύμβαση.

25 (2) Κάθε εκπαιδευτικός λειτουργός με σύμβαση ο οποίος βρίσκεται στη δημόσια εκπαιδευτική υπηρεσία κατά την 1η Δεκεμβρίου 1985 και ανεξάρτητα του αν η υπηρεσία του ήταν συνεχής ή διακεκομμένη, διορίζεται  
30 από την Επιτροπή από την ημερομηνία δημοσίευσης του παρόντος Νόμου στην επίσημη εφημερίδα της Δημοκρατίας, σε κατάλληλη θέση στη δημόσια εκπαιδευτική υπηρεσία σύμφωνα με τις πρόνοιες των περί Δημοσίας Εκπαιδευτικής Υπηρεσίας Νόμων του  
35 1969 έως (Αρ. 2) του 1985 και σύμφωνα με τους πίνακες που ετοιμάσθηκαν και θα διαβιβαστούν από το Γενικό Διευθυντή του Υπουργείου Παιδείας προς την Επιτροπή».

40 «3(1) Notwithstanding the provisions of the Public Educational Service Laws 1969 - (No.2) of 1985 or of any

other Law or Regulation, concerning the Public Educational Service, in respect of the methods and procedures of filling of posts in the Public Educational Service, the Commission may in its discretion make appointments of educational officers on contract.

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(2) Every educational officer on contract who serves in the public educational service as on the 1st December, 1985 and irrespective of the fact whether his service was continuous or not, shall be appointed by the Commission in an appropriate position in the public educational service in accordance with the provisions of the Public Educational Service Laws 1969 - (No.2) of 1985 and the lists; which have been compiled and shall be forwarded by the Director-General of the Ministry of Education to the Commission»).

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On 8.3.86 the President of this Court in *Savva v. The Republic*, (1986) 3 C.L.R. 445, declared the Educational Officers (Teaching Staff) (Emplacements, Transfers, Promotions and Related Matters) Regulations, 1972, invalid as being ultra vires the enabling Law and unreasonable.

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It is the contention of counsel for the respondents in her written address that in view of the decision in *Savva* case (supra), this recourse cannot proceed as the applicant has no more any legitimate interest; that the respondent Commission acted in accordance with Section 28 of Law No. 10/69; and that the application of the Regulations would lead to unreasonable, unjust and unequal results for the interested parties.

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An appointment in the public service even on contract is an administrative act. The administrative Authority must observe and apply the Law (Constitution, Statutes and Regulations made thereunder). A Law cannot be disregarded on any ground by any administrative or other public authority. The legislative power is vested in the House of Representatives and by delegation to another body - in this case the Council of Ministers under s. 76 of Law No. 10/69. The arbiter of the constitutionality of a Law and the validity of Regulations made under an enabling Law, is only the Court.

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In *Kapsou v. The Republic*, (1983) 3 C.L.R. 1336, Triantafyllides, P., had this to say on pages 1340 - 1341:-

«Before proceeding any further in this judgment I would like to observe that I am inclined to the view that the

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respondent Commission could not, even on advice from the Attorney - General, disregard as invalid the above referred to regulations (4), (7) and the proviso to regulation (6) which are, in effect, legislation of a delegated nature enacted under section 36 of Law 33/67. Once such legislation was made by the competent organ, in this instance by the Council of Ministers, such legislation has to be complied with until it is repealed by the Council of Ministers (in view of the advice of the Attorney-General or for any other reason) or until it is found to be ultra vires by a judicial decision (see, in this respect, inter alia, Tsoutsos on The Administration and the Law («Τσοῦτσου, Διοίκησης και Δίκαιον»), (1979), pp. 41, 88, 89, 99, 116, Manual of Administrative Law by Spiliotopoulos («Σπηλιωτοπούλου, Εγχειρίδιον Διοικητικού Δικαίου»), (1977), p. 79 et seq., and Delikostopoulos on Administrative Law («Δεληκωστοπούλου, Διοικητικόν Δίκαιον»), vol. A, (1972), p.47 et seq.).

The legality of the act complained of is governed by the regulations in force at the time it was made. The provisions of Regulation 10(2) were mandatory. They left no discretion to the Commission - (*PapaKyriacou v. The Republic*, (1983) 3 C.L.R. 870; *Psara - Kronidou v. The Republic*, (1985) 3 C.L.R. 1900; *Kyriakidou v. The Republic*, (1986) 3 C.L.R. 913).

The applicant, according to the prescribed list, had priority over all the interested parties. Their appointment on contract is a flagrant violation of the Regulations and it cannot survive judicial scrutiny. The judgment in *Savva* case (supra) issued on 8.3.86 does not influence either the legality of the sub-judice decision or the decision of the Court in the present Case.

In view of the above I need not deal in depth with the second ground raised by counsel for the applicant. It suffices to observe that an Authority should exercise its discretion freely, effectively according to the Law and the principles of Administrative Law, and not rely on extraneous considerations.

For the foregoing reasons the sub-judice decision is declared null and void and of no effect whatsoever under Article 146.4(b) of the Constitution.

Let there be no order as to costs.

*Sub judice decision annulled.*

*No order as to costs.*