

1987 May 25
(A LOIZOU J)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

- 1 SOCRATIS GEORGHIOU THEMISTOCLEOUS
- 2 GEORGHIA CONSTANTINOY LOIZIDOU,
- 3 PANAYIOTIS GEORGHIOU PANAYI

Applicants

v

THE REPUBLIC OF CYPRUS, THROUGH

- 1 THE EDUCATIONAL SERVICE COMMISSION, AND/OR
- 2 THE COUNCIL MINISTERS,

Respondents

(Case No 512/83)

5 *Administrative Law — General Principles — Delegated legislation — Educational Officers — The Educational Officers (Teaching Staff) (Appointments, Emplacements, Transfers, Promotions and Related Matters) Regulations 1972 - Regs 5 and 10(2) — The list compiled under Reg 5 — Reg 10(2) clearly sets out rules of priority — Sub judice decision taken before the decision in Savva v The Republic (1986) 3 C L R 445 whereby Regulations 5 and 10(2) were declared ultra vires the enabling law — The respondents were not entitled to disregard the said Regulations*

10 *Legitimate interest — Appointments on contract in disregard of the rules of priority (Regs 5 and 10(2) of the Educational Officers (Teaching Staff) (Appointments, Emplacements, Transfers, Promotions and Related Matters) Regulations 1972) — Had there been strict compliance with the rules of priority applicants 2 and 3 would not have been appointed and applicant 1 would not have been appointed except in the place of one of the interested parties — Application of applicants 2 and 3 dismissed — Application of applicant 1 succeeds in part*

15 *as against such interested party*

In making appointments on contract for the school year 1983-1984 the respondent Commission did not follow the order of priority in the list compiled in virtue of the aforesaid Regulation 5

20 *However in view of the places in the said list of the applicants and the interested parties, if the Commission had applied the list applicants 2 and 3 would not have been appointed whereas applicant 1 would have been*

appointed in the place of interested party Nicos Chnstodoulou

Held annulling in part the sub judge decision (1) Reg 10(2) of the aforesaid Regulations sets out clearly the rules of priority The case law of this Court shows that the respondent Commission was not entitled to disregard the provisions of Reg 10(2) which at the time of taking of the sub judge decision were still in force The Court in this case is concerned with the legality of the act at the time it was taken and for this reason the decision in *Savva v The Republic* (1986) 3 C L R 445, which was delivered after the sub judge decision and whereby Regs 5 and 10(2) of the said Regulations were declared ultra vires the enabling law, does not affect the position in this case

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(2) Compliance with the order of priority would have led to the following appointments that is of Applicant 1, Interested party Paraskevopoylos, interested party Kousparou interested party Gavrielides and interested party Mylonas Consequently the application of applicants 2 and 3 cannot succeed and the application of applicant 1 can only succeed as against interested party Nicos Chnstodoulou

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Recourse dismissed to the extent indicated above Appointment of interested party Chnstodoulou annulled No order as to costs

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Cases referred to

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

Kynakidou v Educational Service Commission (1986) 3 C L R 913,

Kouis and Others v The Republic (1986) 3 C L R 1874,

Sams v The Republic (1987) 3 C L R 186,

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Sams v The Republic (1987) 3 C L R 229

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

Kapsos v The Republic (1983) 3 C L R 1336

Recourse.

Recourse against the decision of the respondents to appoint the interested parties as school-master of Physics on contract for the school-year 1983-1984 in preference and instead of the applicants.

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Th. Montis, for the applicant

M Florentzos, Senior Counsel of the Republic for the respondents

Th Ioannides, for interested party No 1

A Markides, for interested party No 2

5 *N Panayiotou* for interested party No 4

No appearance for interested parties Nos 3 and 5

Cui adv vult

A LOIZOU J read the following judgment By the present recourse the three applicants seek

10 (a) declaration of the Court that the act and/or decision of the respondent Commission by which they appointed Andreas Paraskevopoulos Androulla Kousparou Achilleas Gavnellides Photios Mylona and Nicos Christodoulou to the post of school-master of Physics (Φυσιογνωστική) on contract, for the year 1983 1984 instead of the applicants is null and void and with no legal effect

15 (b) Declaration of the Court that the refusal and/or omission of the respondent Commission to appoint the applicants as school-masters of Physics in strict compliance with the order of priority of the List of candidates for appointment is null and void and with no legal effect and what was omitted ought to be done retrospectively

20 (c) Declaration of the Court that the suggestion and/or submission and/or order of another authority and especially of the Council of Ministers respondents 2 to appoint the aforesaid interested parties instead of the applicants is contrary to Law and in abuse of the powers given by the Public Educational Service Law 1969 (Law No 10 of 1969)

25 The three applicants were placed on the List of candidates for appointment as school-masters of Physics in the following order Applicant 1, Themistocleous under serial No 4 Applicant No 2 Loizidou, under serial No 25 and applicant No 3 Panayi under serial No 26 The five interested parties were appointed under serial numbers, 15, 16, 20 24 and 37

35 The said list of candidates was prepared by virtue of the provisions of Regulation 5 of the Educational Officers (Teaching Staff) (Appointments, Emplacements, Transfers Promotions and

Related Matters) Regulations 1972, as amended

Under the provisions of Regulation 10(2) thereof «appointments on contract are made in order of priority from the relevant lists of persons to be appointed» The reasons for the respondent Commission, not following the order of priority under the aforesaid Regulation appear in paragraph 4 of its minutes of the 12th September 1983, (Appendix «A») attached to the opposition. It states that the strict observance of the order of priority of the new List of candidates for appointment offends the constitutionally safeguarded principle of equality and it would be unfair for those appointed earlier to remain without appointment as on the basis of the established practice those appointed on contract had the conviction that they were obtaining a permanent post and that the manner of their appointment was a mere procedural formality, that is they considered themselves in a sense permanent and on the basis of this factor they created obligations, family, social, financial and on many occasions left their previous employment

In the case of *Psara - Kronidou v The Republic* (1985) 3 C.L.R. 1900 it was held that the respondent Commission could not disregard the provisions of the aforementioned Regulation 10(2), which for all intents and purposes at the time of taking the sub judice decision was in force. This principle was followed in the cases of *Loukia Kynakidou v The Educational Service Commission*, Recourse No 785/85, judgment delivered on the 4th June, 1986,* *Kouis and Others v The Republic*, Recourse No 34/85, judgment delivered on the 25th September 1986**, and also in *Georghios S Sams v The Educational Service Commission*, Recourse No 940/85, judgment delivered on the 27th January, 1987***, - both judgments as yet unreported - where extensive reference is made to the relevant Case Law of this Court

This approach was followed by me in the case of *Georghios Sams v The Republic*, Case No 242/83, judgment delivered on the 5th February, 1987****. I find no reason whatsoever to depart from the approach of my learned brethren in the recourses just referred to and which I followed in the *Sams* case (supra). The said Regulation sets out clearly the rules of priority which had to be

* Reported in (1986) 3 C.L.R. 913

** Reported in (1986) 3 C.L.R. 1874

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

**** Reported in (1987) 3 C.L.R. 229

observed in appointing on contract educational officers and which were indeed in force at the time the sub judice decisions were taken. As I am concerned in the present case with the legality of the act at the time it was taken and not with the consequences brought about by the subsequently delivered judgment of the Supreme Court in *Efstathios Savva v. The Republic* (1986) 3 C.L.R. 445, what was held in *Kapsos v. The Republic* (1983) 3 C.L.R. 1336 has no application.

10 A comparison, however, of the order of priority of the three applicants with the five interested parties shows that those that had to be appointed in compliance with the order of priority set out in the List of candidates were applicant 1, Themistocleous, interested party 1, Paraskevopoulos, interested party 2, Kousparou, interested party 3, Gavrielides, and interested party 4, 15 Mylonas. Consequently the application of applicants 2 and 3 could not succeed and the application of applicant 1, could not succeed except only as against interested party Nicos Christodolou.

20 The recourse therefore is dismissed to the extent stated above and it succeeds only as regards that part of the application of applicant 1, that challenges the appointment of interested party 5, Nicos Christodoulou.

In the result order is made accordingly with no order as to costs.

Order accordingly.