

1987 May 28  
(SAVVIDES J)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NELLI PSARA - KRONIDOU,

*Applicant,*

v

THE REPUBLIC OF CYPRUS, THROUGH  
1 THE EDUCATIONAL SERVICE COMMISSION,  
2 THE COUNCIL OF MINISTERS,

*Respondents*

*(Case No 502/85)*

*Administrative Law -- General Principles -- Delegated legislation -- Educational Officers (Teaching Staff) (Appointments, Emplacements, Transfers, Promotions and Related Matters) Regulations 1972 -- Regs 5 and 10(2) -- Appointments in disregard of the order of prnonty in the relevant list compiled in virtue of Reg 5 -- Sub judice decision taken before the decision in Savva v The Republic (1986) 3 C L R 445 whereby Regs 5 and 10(2) were declared ultra vires enabling law -- Respondents not entitled to disregard said Regulations for so long as same were in force*

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Applicant's name was placed under seral number 4 on the prnonty list of candidates for appointment as teacher of Domestic Science Such list was compiled in virtue of the aforesaid Reg 5 Despite her prnonty number she was not offered appointment for 1983 1984 because the Commission decided to renew the appointment of those who served on contract for the school-year 1982-1983 As a result applicant filed recourse 443/83\* When applicant was informed that the contracts of those who served for 1983-1984 were renewed for the school-year 1984-1985, thus leaving her out, she filed the present recourse challenging the appointment of the interested parties to the aforesaid post for the said school-year The priority of the applicant over the interested parties on the said list of appointees was not disputed

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Held, annulling the sub judice decision (1) The respondent Commission was not entitled to disregard Reg 10(2) of the aforesaid Regulations, in accordance with which appointments are made in accordance with the relevant list of appointees in order of prnonty

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(2) The decision in *Savva v The Republic* (1986) 3 C L R 445, whereby

Regs 5 and 10(2) of the said Regulations were declared ultra vires the enabling law, cannot affect the outcome of this case, since the decision was issued after the taking of the sub judice decision and, consequently, at the time of the sub judice decision the Regulations were still in force

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*Sub judice decision annulled with the exception of the appointment of interested party Philippou*  
*Recourse against interested party Philipou withdrawn and dismissed*

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*No order as to costs*

*Cases referred to*

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

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

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

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*Themistocleous v The Republic* (1987) 3 C L R 196.

*Sams v The Republic* (1987) 3 C L R 283.

*Elia v The Republic* (1987) 3 C L R 253,

*Kissonergis and Others v The Republic* (1987) 3 C L R 312.

*Themistocleous v The Republic* (1987) 3 C L R 705.

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

**Recourse.**

Recourse against the decision of the respondents to appoint on contract as teachers of Domestic Science the interested parties in preference and instead of the applicant.

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

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

*Cur. adv. vult*

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SAVVIDES J. read the following judgment. This recourse is directed against the decision of the respondents to appoint on contract as teachers of Domestic Science the interested parties, namely, Anastasia Philippou, Stella Ioannou, Androula Kouali, Maria Karaoli, Efthymia Mouzoura, Louiza Aristotelous, Haritini Mavroudi, Andriana Spanoudi and Eleni Mattheou for the school-year 1984-1985 instead of the applicant.

The applicant graduated «Harokopios School» of Athens in 1960 and from July, 1960 she was appointed and served in the Commercial Lyceum of Famagusta until 1965, when she resigned. In 1980 she applied for re-appointment as a teacher of Domestic Science and was placed on the relevant list of appointees as No. 51. Following her objection, in 1982, she was upgraded on the relevant list as number 4. Despite her priority number she was not offered any appointment in 1983 and she filed, as a result, recourse No. 442/83. On 11.7.1984 she was informed through the press, that the contracts of those teachers who served during 1983-1984 were renewed for 1984-1985, thus leaving her out, whereupon she filed the present recourse.

The sub judge decision is challenged on the ground of unlawfulness in that it is contrary to the provisions of the Educational Officers (Teaching Staff) (Emplacements, Transfers, Promotions and Related Matters) Regulations, 1972 and in violation of the priority number of the applicant on the list of appointees.

The sub judge decision dated 9.7.1984, reads as follows:

«3. *Appointments on contract.*

The Commission in view of the documents of the Director-General of the Ministry of Education No. 197/69/3, dated 28/6/84 and 3/7/84 and bearing in mind the provisions of the Law and the Regulations as well as its decision dated 12/9/1983 considers that for the reasons mentioned in the said decision, the appointment on contract of the teachers and instructors who served on contract during the school-year 83/84 is imperative.»

During the hearing of the case it transpired that interested party Philippou was not amongst the persons appointed on contract for the school-year 1984-1985, although she was amongst those who served on contract during the previous year, the reason being, as explained by counsel for the respondent, that she has been offered permanent appointment. Counsel for applicant conceded in his reply that if this is the position the recourse against the interested party should be withdrawn. It is clear from the sub judge decision, which is attached to the opposition, that this interested party is not amongst those persons to whom appointment on contract was offered for 1984-1985 in view of this I consider the recourse against this interested party as

withdrawn and it is therefore hereby dismissed.

In accordance with Regulation 10(2) of the Regulations (cited above), appointments on contract are made from the relevant lists of appointees in order of priority. The priority of the applicant over  
 5 the interested parties on the list of appointees has not been disputed.

The gist of the case, as it emanates from the addresses of counsel and the decision of the respondent dated 12.9.1983, on which the sub judge decision was based, is whether the respondent,  
 10 acted legally in deciding not to apply the Regulations or whether it was legally bound to apply same even if it considered them to be unreasonable or ultra vires the law.

The same question came before this Court in a number of cases,  
 15 where it was held that the respondent could not disregard the provisions of Regulation 10(2) as long as the said Regulation was in force. This view was also taken in the case of *Psara-Kronidou v. Republic* (1985) 3 C.L.R. 1900, (Recourse No. 442/83 of the same applicant concerning the appointments for 1983-1984  
 20 which had, in the meantime, been determined). This case was followed by a number of other cases concerning appointments of teachers on contract and the applicability of Regulation 10(2) where the same view was taken. (See *Sarris v. The Republic* (Case No. 940/85, in which judgment was delivered by me on  
 25 27.1.1987)\*; *Sarris v. The Republic* (Case No. 424/83, in which judgment was delivered on 5.2.1987)\*\*; *Themistocleous v. Republic* (Case No. 816/85 in which judgment was delivered on 13.2.1987);\*\*\* *Sarris v. Republic* (Case No. 456/84, judgment delivered on 18.3.87);\*\*\*\* *Elia v. Republic* (Case No. 499/83,  
 30 judgment delivered on 10.3.87);\*\*\*\*\* *Kissonergis and others v. Republic* (Case No. 903/85, judgment delivered on 30.3.1987)\*\*\*\*\* and *Themistocleous v. Republic* (Case No. 512/83, judgment delivered on 25.5.1987)\*\*\*\*\*. All the above cases are still unreported.

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

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

\*\*\* Reported in (1987) 3 C.L.R. 196.

\*\*\*\* Reported in (1987) 3 C.L.R. 283.

\*\*\*\*\* Reported in (1987) 3 C.L.R. 253.

\*\*\*\*\* Reported in (1987) 3 C.L.R. 312.

\*\*\*\*\* Reported in (1987) 3 C.L.R. 705.

Extensive reference to the decision of 12.9.83, which formed the basis of the sub judge decision, has been made by me in the case of *Elia v. Republic* (supra) and I find it unnecessary to expound further on it.

It is obvious from its contents that extraneous considerations were taken into account in arriving at the said decision, in violation of Regulation 10(2), the strict application of which was considered by the respondent to be unfair to those persons who had been serving on contract during the previous years. 5

I need not repeat what has been said in the above cases which I adopt and I therefore find that the sub judge decision has been taken in violation of the Law in force at the time and must be annulled. It is to be noted that the aforesaid Regulation has, in the meantime, been declared void in the case of *Savva v. The Republic* (1986) 3 C.L.R. 445, as being ultra vires the law and unreasonable, but this cannot affect the outcome of the present case, since at the time of the sub judge decision the said Regulation was still in force. 10 15

In the result this recourse succeeds concerning all interested parties with the exception of interested party Anastasia Philippou, and the sub judge decision is annulled to that extent. No costs. 20

*Sub judge decision  
annulled in part. No  
order as to costs.*