

1988 May 28

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS HADJISOTERIOU AND OTHERS,

Applicants,

v.

THE CUPRUS TELECOMMUNICATIONS AUTHORITY,

Respondents.

(Consolidated Cases Nos. 520/87, 549/87 and 656/87).

Annulment of an administrative act—Reconsideration of matter—Administration should address itself to the legal and factual background obtaining at the time of the annulled decision—Annulment of promotions in respect of 2 posts—Reconsideration of the matter of filling them afresh along with consideration of the filling of two other posts, which had become vacant after the time of the annulled decision—Ground of annulment—Taking into consideration a service report in respect of a period that followed the annulled decision—Ground of annulment. 5

Public Corporations—Cyprus Telecommunications Authority—Promotions—The Personnel of the Cyprus Telecommunications Authority General Regulations, 1982, Reg. 10—Promotion tables—A necessary prerequisite for the exercise of the power to promote. 10

The facts of this case appear from the hereinabove headnote.

Sub judice decision annulled.
No order as to costs. 15

Cases referred to:

Republic v. Saferides (1985) 3 C.L.R. 163;

Ioannides and Another v. Republic (1979) 3 C.L.R. 628;

Kyprianides v. Republic (1968) 3 C.L.R. 653;

Tyllirides v. CYTA (1987) 3 C.L.R. 920.

Recourses.

5 Recourses against the decision of the respondents to promote the interested parties to the post of Section Leader (Technical Personnel) in Preference and instead of the applicants.

A. *Angelides*, for applicants.

A. *Hadjioannou*, for respondents.

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Cur. adv. vult.

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PIKIS J. read the following judgment. On May 5, 1987, the Supreme Court, in exercise of the powers possessed under Article 146 of the Constitution, annulled a decision of the respondents taken on May 28, 1986, whereby Christos Kyriacou and Costas Serghiou had been promoted to the post of Section Leader (Technical Personnel) - *Tyllirides v. CY.TA.* (1987) 3 C.L.R. 920. Thereupon the respondents came under a duty to reconsider their decision and address themselves anew to the task of filling the two posts in question. It is settled that in so doing they had to address themselves to the legal and factual background obtaining at the time of the annulled decision, that is, on 20/5/86. (See, *inter alia*, *Republic v. Safirides* (1985) 3 C.L.R. 163; *Ioannides and Another v. Republic* (1979) 3 C.L.R. 628 and *Kyprianides v. Republic* (1968) 3 C.L.R. 653). Instead of observing the framework relevant to reconsideration of their decision, they considered the matter anew and in so doing failed to carry out the duty cast upon them upon judicial annulment of administrative action. Below, we explain the reasons that led to this failure:

Firstly, they did not confine reconsideration to the filling of the

two vacant posts the subject matter of the decision of May 28, 1986. They filled in addition, two other posts that became vacant on a date subsequent to 28.5.86. That they did not confine their inquiry to the legal and factual framework of 25.5.86, is also evident from the fact that the promotions made were not given retro- 5
active effect.

Secondly, they failed to remedy legal omissions that invalidated their decision, in the first place. Seemingly, they made the promotions in the absence of promotion tables, a prerequisite for the valid exercise of their powers, as the Court declared in *Tyllirides*, 10
supra. In *Tyllirides*, *supra*, the Court declared that compliance with the provisions of Regulation 10 governing promotion tables, is a prerequisite for the valid exercise of the functions of the respondents. No promotion tables had been prepared for the year 1986; therefore, the gap noticed by the Court in *Tyllirides*, *supra*, 15
remained wide open.

Thirdly, they did not confine their inquiry to the factual material that was permissible to consult on 28.5.86. In addition to the reports for the year 1985 that were properly before the respondents (after the specification of the forms of evaluation reports made on 8.11.85), they took into consideration reports for the year 1986 and, in the case of Christos Kyriacou, for the year 1987 as well. In accordance with Regulation 23(4) the evaluation reports must be filed yearly. 20

For all the above reasons I feel constrained to annul once more the promotions made. 25

The sub judge decision is declared to be wholly void pursuant to the provisions of para. 4 (b) of Article 146 of the Constitution.

Sub judge decision annulled.