

(1988)

1988 August 23

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

THEODORA ALEXANDROU KKELI,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE PERSONNEL AND
PUBLIC ADMINISTRATION DEPARTMENT,

Respondents.

(Case No. 232/85).

Executory act—Law 32/81 providing for appointment of casual officers to organic posts—Decision not to include applicant in the list submitted to the Public Service Commission for appointment—Decision based on view that applicant did not satisfy the required qualifications—The decision created a legal situation affecting the applicant and is, therefore, executory.

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Public Officers—Appointments—Law 32/81 providing for appointment of casual officers to organic posts—Qualifications—Judicial control—Court will not interfere, if decision reasonably open to the respondents.

The respondents did not include the applicant in the list for appointments submitted to the Public Service Commission in virtue of Law 32/81. This decision was based on the view that applicant did not possess the qualifications required by the said law. As, on the material adduced before the Court, such a conclusion was reasonably open to the respondents, the Court dismissed the recourse.

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*Recourse dismissed.
No order as to costs.*

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Recourse.

Recourse against the decision and/or omission of the respondents to refuse to appoint and/or promote the applicant to the post of Housekeeper in the Department of Welfare Services.

5 *S. Sofroniou*, for the applicant.

Ch. Kyriakides, Counsel of the Republic, for the respondents.

Cur. adv. vult.

10 SAVVIDES J. read the following judgment. The applicant challenges the decision and/or omission of the respondents contained in their letter dated the 16th January, 1985, whereby they refused to appoint and/or promote her to the post of Housekeeper in the Department of Welfare Services.

The facts of the case are briefly as follows:

15 The applicant was appointed on 1st November, 1971, as a Domestic Servant on a casual basis. On 1st June, 1978, she was assigned duties of a Housekeeper.

20 As from the 1st December, 1983, four casual "Housekeepers" were appointed to the permanent post of Housekeeper and their appointment was published in the official Gazette of the Republic dated the 23rd March, 1984. The applicant, who was not appointed, protested by letter to the Director of Welfare Services, who informed her counsel, by letter dated the 30th May, 1984, that the post of Housekeeper was abolished by a decision of the Ministries of Finance and Labour and Social Insurance, dated the 2nd
25 July, 1979, and renamed as "Institutional Assistant", that her non-emplacement to such post was due to a mistake and that the Department was ready to emplace her to the post of Institutional Assistant retrospectively, as from 1st November, 1979. The letter ended by stating that the appointment of other persons to the post
30 of Housekeeper was made in accordance with the provisions of s.

3 of Law 32/81, which did not apply to the applicant. The applicant then addressed, through her counsel, a letter to the respondents dated the 4th December, 1984, claiming that she should have been appointed to the post of Housekeeper. The respondents replied by letter dated the 16th January, 1985, informing her as follows: 5

"I have been instructed to refer to your letter dated the 4th December, 1984, in respect of a claim of Mrs. Theodora Alexandrou Kkeli, for appointment to the post of Housekeeper, in the Department of Social Services, and to inform you that, on the basis of the material submitted to us by the Department, your client is not entitled to an appointment to the post of Housekeeper, because she does not possess the qualifications required by the scheme of service. 10

2. In accordance with section 3(2) of Law 32/81, which provides for the appointment of Casual Employees to organic posts 'the appointment of a casual employee to a suitable post in the public service on the basis of sub-section (1) is made if the employee possesses the qualifications required by the schemes of service for the post allocated to him.'" 15 20

The applicant filed the present recourse challenging the above decision. An application filed by counsel for applicant for amendment of the title, prayer, grounds of law and facts of the recourse, was dismissed by me. (See *Kkeli v. The Republic* (1986) 3 C.L.R. 2030) for the reasons stated therein. 25

Counsel for applicant argued that the appointment of other officers, who were carrying out the same duties as the applicant, to the post of Housekeeper and the non-appointment of the applicant to such post, results to a discrimination against the applicant. Counsel also claimed that the post of Housekeeper was never abolished in fact, but was only renamed. He also argued that the respondents failed to select the best candidate for appointment and that the applicant is superior to those appointed regarding qualifications and previous service. 30

Counsel for the respondents raised the preliminary objection that the sub judice decision is not an executory one and the respondents do not take any part in the appointment or promotion of public officers and did not take any decision in the matter. Alternatively, he argued that when the post of Housekeeper was abolished and renamed to that of Institutional Assistants, the title of the post of the applicant was not changed due to a mistake which was later corrected by letter of the Director of the Department of Social Services who emplaced the applicant to the post of Institutional Assistant retrospectively, as from the 1st November, 1979. Counsel lastly argued that the applicant was not included in the list of those officers who were to be appointed to the post of Housekeeper which was prepared by the respondents and sent to the Public Service Commission, because she did not possess the qualifications required by the scheme of service for the post, and more specifically "four years' attendance in a school of secondary education".

I shall deal with the preliminary objection first.

The proper organ under the Law to effect appointments or promotions is the Public Service Commission. In the present case the applicant was not appointed to the post of Housekeeper, by virtue of the provisions of Law 32/81, for the simple reason that her name was not included in the list of those to be appointed which was submitted by the respondents to the Public Service Commission. Upon her inquiry she was informed by the respondents that the reason she was not included in the list was because she did not possess the qualifications required by the scheme of service for the post. Since it was as a result of this action of the respondents that the applicant was not appointed and this action created a legal situation as far as the applicant is concerned which affected her interest I find that this act is an executory one in the circumstances.

I will now proceed to consider the case on its merits. No question of comparison of the applicant with any other officer arises here since the appointment or promotion of other officers is not

challenged by this recourse. The only point to be considered is whether it was reasonably open to the respondents to exclude the applicant from the list of those eligible for appointment to the post of Housekeeper.

The position regarding the relevant post is confused. Although reference is made to a decision of the Ministries of Finance and Labour and Social Insurance, dated the 2nd July, 1979, by which the post of Housekeeper was abolished and renamed to Institutional Assistant, no explanation was furnished, by either side, as to how this post came in existence again. In any event, in the absence of any evidence and having regard to the principle of good and proper administration I will consider this post as having been in existence at the time of the sub judice decision and I will proceed on this assumption.

Section 3(1) of Law 32/81, to which reference is made in the sub judice decision, as amended by Law 15/82 reads, as far as relevant, as follows:

"3. (1) Κατά παρέκκλισιν εκ των διατάξεων... πας έκτακτος υπάλληλος τελών εν υπηρεσία κατά την ημερομηνίαν θεσπίσεως του βασικού νόμου, τηρουμένων των διατάξεων των εδαφίων (2) και (3), διορίζεται υπό της Επιτροπής Δημοσίας Υπηρεσίας από της ημερομηνίας δημοσιεύσεως του βασικού νόμου εις κατάλληλον θέσιν εν τη δημοσία υπηρεσία συμφώνως προς τας διατάξεις των περί Δημοσίας Υπηρεσίας Νόμων του 1967 έως 1981 και συμφώνως προς τους υπό του Διευθυντού της Υπηρεσίας Δημοσίας Διοικήσεως και Προσωπικού ετοιμασθέντας και διαβιβασθησομένους προς την Επιτροπήν Δημοσίας Υπηρεσίας πίνακας.

And the translation in English:

("3.-(1) Notwithstanding the provisions... any casual employee being in the service on the date of the enactment of the principal law, subject to the provisions of sub-sections (2) and (3) is appointed by the Public Service Commission as from the

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date of publication of the principal law to a suitable post in the public service in accordance with the provisions of the Public Service Laws 1967 to 1981 and in accordance with the lists prepared and submitted to the Public Service Commission by the Director of the Public Administration and Personnel Service.")

Sub-section (2) of the same section reads as follows:

"(2) Ο δυνάμει του εδαφίου (1) διορισμός εκτάκτου υπαλλήλου εις κατάλληλον θέσιν εν τη δημοσία Υπηρεσία γίνεται εάν ο υπάλληλος έχη τα υπό των σχεδίων υπηρεσίας της προς αυτόν απονεμουμένης θέσεως προνοούμενα προσόντα..."

And the translation in English:

"(2) The appointment, on the basis of sub-section (1) of a casual employee to a suitable post in the public service is effected if the employee has the qualifications required by the schemes of service for the post to which he is appointed."

It is the case for the respondents that the applicant was not included in the list as she does not possess the qualifications required by the schemes of service for the post in question and more specifically that of a four years' attendance at a school of Secondary Education.

It is the applicant's allegation that she completed the 4th grade of the gymnasium and that all certificates were contained in her file which was left behind at Famagusta, as a result of the Turkish invasion. She was given, however, the opportunity to adduce any other evidence to this effect but she was unable to do so. In the absence of any evidence I cannot find as a fact that the applicant did in fact complete the 4th grade of the Gymnasium. As a result, on the basis of the material before me, which was also before the respondents, I find that it was reasonably open to the respondents to reach the sub judice decision, in the circumstances.