

1968  
Mar. 28

[STAVRINIDES, J.]

COSTAS  
STYLIANIDES  
v.  
REPUBLIC (PUBLIC  
SERVICE  
COMMISSION)

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

COSTAS STYLIANIDES

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

*(Cases Nos. 20/67 and 29/67).*

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*Public Officers—Appointments—Filling the post of Inspector of Boilers, Ministry of Labour—Interested Party not fully qualified, whereas Applicant fully qualified, by the relevant scheme of service for the said post—Doctrine of “excusable illegality” (θεμιτή παρανομία)—Applicability—In the circumstances of the present case the aforesaid doctrine is not applicable—See, also, herebelow.*

*Public Service Commission—Bound by the scheme of service—No right to appoint a candidate lacking one of the specific qualifications required by the scheme of service, no matter what experience he possesses—See, also, above.*

*Illegality—“Excusable illegality”—Doctrine of—Applicability. See above.*

*Θεμιτή παρανομία—See above.*

*Appointments—Appointments in the public service—See above.*

By this recourse the Applicant challenges the validity of the appointment of the Interested Party M. to the post of Inspector of Boilers, Ministry of Labour. The Interested Party did not possess one of the qualifications required by the relevant scheme of service *i.e.* the requirement of three years' apprenticeship as Boiler-maker, whereas the Applicant fulfilled all the requirements of such scheme of service. An attempt was made to justify the appointment of the Interested Party on the basis of the doctrine of what is known as “excusable illegality” («Θεμιτή Παρανομία»).

In annulling the appointment of the Interested Party and rejecting in the circumstances of this case the aforesaid doctrine, the Court:-

*Held*,<sup>(1)</sup>. An interesting novel situation would have arisen had both the Interested Party and the Applicant been deficient in relation to the scheme of service. But as it is, the conclusion is justified that while the Interested Party is not fully qualified, the Applicant, is.

(2) The Commission's minute of the subject decision (*exhibit 7*) records:-

“Mr. Sparsis (the Director-General of the Ministry) further stated that the position was deplorable due to the absence of a Boiler Inspector and it was considered imperative that the post should be filled the sooner possible. Both Mr. Sparsis and Mr. Constantinou recommended Mr. Molozián (the Interested Party) for the post”.

In so far as this is an attempt to justify the appointment complained of on the basis of what is known as “excusable illegality” (Θεμιτή Παράνομια). I would say this: although the doctrine is applicable where there is no one qualified under the scheme of service and an appointment is urgently required, there is no authority for extending the doctrine to a case where one of the candidates is qualified and nothing has been found against him; and in this case no reason has been given why the vacancy should not have been filled by the Applicant's appointment.

*Sub judice decision annulled.*

### **Recourse.**

Recourses against the decision of the Respondent to appoint or promote to the post of Inspector of Boilers in the Ministry of Labour and Social Insurance, the Interested Party Artin Molozián in preference and instead of the Applicant.

*A. Triantafyllides*, for the Applicant.

*G. Tornaritis*, for the Respondent.

*Cur. adv. vult.*

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The following Judgment was delivered by:-

STAVRINIDES, J.: The Applicant holds the post of Boiler-maker in the Public Works Department of the Government. There was, and is, only one such post in the public service and it is an established one.

By an advertisement published in the official Gazette of the Republic on November 10, 1966, under Notification No. 1296 (*exhibit 1*) applications were invited for appointment to the post of Inspector of Boilers, Ministry of Labour, a first entry and promotion post, the scheme of service relating to which, as set out in the advertisement, is as follows:

- “2. Duties and Responsibilities of the person to be appointed: Registration, inspection and testing of steam boilers, engines and receivers and keeping the necessary particulars.
3. Qualifications: The person to be appointed must have been apprenticed for five years as a Boiler-maker. Must possess the necessary technical knowledge and three years' practical experience in the inspection and testing of steam boilers, engines and receivers. Must have a thorough knowledge of the relevant legislation”.

Pursuant to that advertisement fourteen candidates applied for the post. The Public Service Commission (hereafter “the Commission”) called for interview only the Applicant and Mr. Artin Moloizian, who at the time was Tug Engineer, Famagusta. Both were interviewed on December 22, 1966, in the presence of Mr. M. D. Sparsis, the Director General of the Ministry of Labour and Social Insurance, and Mr. H. Constantinou, Acting Senior Inspector of Factories; and on the same day, following the interview, the Commission proceeded to appoint to the post Mr. Moloizian.

An identical claim for relief is made in each application, viz. one for

“Declaration that the decision of the (Commission) to appoint or promote to the post of Inspector of Boilers, Ministry of Labour, Mr. Artin Moloizian in preference and instead of Applicant is *null* and *void* and of no effect whatsoever”:

the reason for the later application appearing in para. 6 at p. 2 thereof, which reads:

“The . . . . . publication (of Mr. Moloizian’s appointment) appeared on January 21, 1967. Applicant has already filed application No. 20/67 before the publication of the appointment . . . . . so that the present application should be heard with application 20/67”.

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Accordingly by consent the two applications were heard together.

Mr. Moloizian, who, pursuant to a notice served on him as an interested person, attended before me on the first date fixed for the hearing of each application (being the same date for both cases) said in answer to a question by the court that he was content to leave the defence of his interests to counsel for the Commission, Mr. Tornaritis; and while he also attended the court on the other two days of hearing he gave no evidence and called no witness, although at the conclusion of the case for the Respondent I specifically asked him if he wished to do so.

Evidence was given only by Mr. P. Ectorides, Senior Electrical and Mechanical Engineer, Public Works Department, called by the Applicant; and the following documents have been put in evidence in addition to the scheme of service: the personal file of the Applicant (*exhibit 2*); his application for appointment to the subject post (*exhibit 3*); the file of confidential reports on him (*exhibit 4*); the personal file of Mr. Moloizian and a file of confidential reports on him (*exhibits 5 & 6* respectively); and the Commission’s minute of the subject decision (*exhibit 7*).

In *exhibit 7* it is stated that

“(Mr. Moloizian) fulfilled in all respects the requirements of the scheme of service except the requirement for apprenticeship as Boiler-maker”;

and it has not been claimed by, or on behalf of, Mr. Moloizian that he has in fact satisfied that requirement. Therefore I conclude that he has not.

Now the minute goes on:

“Mr. . . . . . Sparsis and Mr. . . . . . Constantinou stated that to their knowledge there was no person in

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Cyprus who possessed the qualification of Boiler-maker.”

But Mr. Triantafyllides in his opening address stated (in effect) that the Applicant held the post of Boiler-maker in the Public Works Department from 1953 to 1956 in an acting capacity and has been holding it substantively since the latter year; Mr. Ectorides stated in his evidence that

“the post of Boiler-maker involves the making and repair of boilers”;

and neither statement has been disputed.

The minute continues:

“During the interview it was proved that Mr. Moloizian had sufficient experience to enable him to carry out the duties of the post satisfactorily”.

What this means is by no means clear. What is clear is that the Commission is bound by the scheme of service, and when a candidate lacks one of the specific qualifications required by the scheme it has no right to appoint him no matter what experience he possesses.

On the other hand it was stated by Mr. Triantafyllides in his opening address — and this again has not been disputed — that “*the only person in the public service who satisfied the conditions for appointment to the subject post was the Applicant*”.

An interesting — and so far as I have been able to ascertain — novel situation would have arisen had both Mr. Moloizian and the Applicant being deficient in relation to the scheme of service. But as it is, the conclusion is justified that, while Mr. Moloizian is not fully qualified by the scheme, the Applicant is.

Then the minute continues:

“Mr. Sparsis further stated that the position was deplorable due to the absence of a Boiler Inspector and it was considered imperative that the post should be filled the sooner possible. Both Mr. Sparsis and Mr. Constantinou recommended Mr. Moloizian for the post”.

In so far as this is an attempt to justify the appointment on the basis of what is known as “excusable illegality” (θεμιτή παρανομία) I would say this: although the doctrine is ap-

plicable where there is no one qualified under the scheme of service and an appointment is urgently required, there is no authority for extending the doctrine to a case where one of the candidates is qualified and nothing has been found against him; and in this case no reason has been given why the vacancy should not have been filled by the Applicant's appointment.

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For the above reasons the interested party's appointment is annulled and the Commission should reconsider the filling of the subject post.

The Respondent to pay the Applicant £15 costs in the earlier case.

*Sub judice decision annulled.  
Order for costs as aforesaid.*