

[STAVRINIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

KIKA GAVA

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION

*Respondent.*

(Case No. 57/66).

1968  
Feb. 5

KIKA GAVA  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

*Public Officers—Public Service and Greek Communal Chamber Service—Transfer from one service to the other as a result of the abolition of the Greek Communal Chamber under the Transfer of the Exercise of the Competences of the Greek Communal Chamber and the Ministry of Education Law, 1965 (Law No. 12 of 1965)—Post held by the Applicant under the Greek Communal Chamber: «Πρακτικογράφος - Γραφεύς» (“Recorder of Minutes—Clerk”)—Emplacement of Applicant by the Respondent Public Service Commission to the post, in the public service, of “Stenographer 1st Grade”, under section 16(1) of the said Law—Test applicable—Comparability of the functions of the post held under the Chamber and of those of the post to which Applicant was emplaced—Whether the Respondent Commission arrived at the right conclusion—Or whether it ought as claimed by the Applicant, to emplace her to the post of Administrative Assistant, 3rd Grade—The criterion is not that by which the exercise of a discretion is controlled—But the objective criterion of whether in fact the functions of the post of “Assistant” were, or were not, more nearly analogous to those of “recorder” held by the Applicant under the Chamber than were the functions of the post of “Stenographer”—Section 16(1)—*

*Communal Chamber—Greek Communal Chamber—Abolition—Transfer to the service of the Republic of those in the service of the Chamber as members of the Staff of its offices—See above.*

*Words and Phrases—«Ἐφ’ ὅσον τοῦτο εἶναι πρακτικῶς δυνα-*

1968

Feb. 5

KIKA GAVA  
v.

REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

τόν» in section 16 (1) of the Transfer of the Exercise of the Competences of the Greek Communal Chamber and the Ministry of Education Law, 1965 (Law No. 12 of 1965).

Section 16(1) of Law No. 12 of 1965 (*supra*), whereby the Greek Communal Chamber was, in effect, abolished, provides:

“16(1) Subject to the provisions of sub-sections (4) and (5), any person who immediately before the date of the coming into operation of this Law was in the service of the Chamber (Note: the Greek Communal Chamber) as a member of the staff of its offices shall be transferred, as from that date, to the service of the Republic and be thereafter placed by the appropriate authority of the Republic therein, as far as practicable in a post whose functions are comparable to the functions of the post held in the service of the Chamber:

Provided.....”.

At the date of the enactment of that Law the Applicant was in the service of the Chamber “as a member of the staff of its offices” holding the post Πρακτικογράφος - Γραφεύς (“Recorder of Minutes—Clerk”). On January 26, 1966, the Respondent Public Service Commission, purporting to act under the aforesaid provision appointed her as Stenographer 1st Grade, General Clerical Staff—She now claims a declaration that:

“The decision of the Respondents to emplace her to the post of Stenographer, 1st Grade, is null and void and/or their omission to emplace Applicant to the post of Administrative Assistant 3rd Grade, ought not to have been made and whatever has been omitted should have been performed”.

In granting the application the Court:-

*Held*,(1). The words of section 16(1) that I translated as “as far as possible” are «ἐφ’ ὅσον τοῦτο εἶναι πρακτικῶς δυνατὸν». For these the English version prepared at the Ministry of Justice has “if practically possible” «ἐφ’ ὅσον» is sometimes used in the sense of “if”. But in my view such use cannot have been intended here, otherwise the result would be that the persons concerned, having

been transferred by the sub-section to the service of the Republic, could be left unposted, in a sort of limbo, for a long time, if not indefinitely. No doubt then «ἐφ' ὅσον» is here used in its correct sense of "as far as".

1968  
Feb. 5  
—  
KIKI GAVA  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

(2) However, I need not discuss the sub-section any further, because both counsel conducted their respective cases on the express footing that the Respondent Commission had *a duty* to place the Applicant *in some post*, such post being "the one most nearly analogous" to that held by her under the chamber when the said Law was passed, which, in my opinion, correctly sums up the effect of the sub-section.

(3) It follows that the subject decision stands or falls, not by the test by which the exercise of a discretion is controlled, but by the objective criterion of whether in fact the functions of the post of Assistant were, or were not, "more nearly analogous" to those of "recorder" than were the functions of the post of Stenographer.

(4) On the material before me, I am of the view that on the whole the functions of the post of Assistant were "more nearly analogous" to those of "recorder of minutes" than were those of Stenographer.

(5) Therefore, it was the Commission's duty to place the Applicant in the post of Administrative Assistant, 3rd Grade, as claimed by her.

(6) For the above reasons the subject decision is hereby annulled. Further, it is hereby declared that the Applicant was entitled to be placed in the post of Administrative Assistant, 3rd Grade; that the Commission's omission to place her in that post ought not to have been made; and that the Commission must so place her.

*Sub judice decision annulled.  
Declaration in terms. Order  
for £30 costs in favour of  
Applicant.*

### **Recourse.**

Recourse against the decision of the Respondent to emplace Applicant to the post of Stenographer 1st Grade instead of that of Administrative Assistant 3rd Grade.

1968  
Feb. 5

KIKA GAVA  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

A. *Triantafyllides*, for the Applicant.

M. *Spanos*, Counsel of the Republic, for the Respondent.

*Cur. adv. vult.*

The following Judgment\* was delivered by:-

STAVRINIDES, J.: Section 16(1) of the Transfer of the Exercise of the Competences of the Greek Communal Chamber and the Ministry of Education Law, 1965, whereby the Greek Communal Chamber (hereafter the "Chamber") was, in effect, abolished makes the following provision:

"Subject to the provisions of sub-sections (4) and (5), any person who immediately before the date of the coming into operation of this Law was in the service of the Chamber as a member of the staff of its offices shall be transferred, as from that date, to the service of the Republic and be thereafter placed by the appropriate authority of the Republic therein, as far as practicable in a post whose functions are comparable to the functions of the post held in the service of the Chamber:

Provided that any such person shall, until he is posted under this sub-section, continue to hold the post which he held immediately before the coming into operation of this Law".

At the date of enactment of that Law the Applicant was in the service of the Chamber "as a member of the staff of its offices", holding the post of Πρακτικογράφος - Γραφεύς ("Recorder of Minutes — Clerk"), to which she had been appointed on May 1, 1962. On January 26, 1966, the Public Service Commission (hereafter "the Commission") purporting to act under that provision appointed her Stenographer, 1st Grade, General Clerical Staff, with effect from the first day of the following month, and she was informed of this by a letter dated the 3rd day of the latter month (*exhibit 2*). She now seeks a declaration that

"the decision of the Respondent to emplace (her) to the post of Stenographer, 1st Grade, is *null* and *void* and of no effect whatsoever and/or their omission to

---

\*For final decision on appeal see p. 322 in this Vol. *Post.*

emplace Applicant to the aforesaid post of Administrative Assistant, 3rd Grade, ought not to have been made and whatever has been omitted should have been performed”.

Mr. Triantafyllides for the Applicant called two witnesses, viz. Mr. P. Adamides, Director General of the Ministry of Education, and Mr. H. Artemis, Ag. Director of the Personnel Department, Ministry of Finance, while Mr. Spanos, Counsel of the Republic, for the Respondent called one witness, viz. Mr. D. Protestos, a member of the Commission.

The scheme of service relating to the post of Recorder of Minutes — Clerk under the Chamber (hereafter “recorder”) and those relating to the posts of Stenographer, 1st Grade, General Clerical Staff (hereafter simply “Stenographer”) and Administrative Assistant, 3rd Grade, in the service of the Republic (hereafter simply “Assistant”) have been put in evidence (*exhibits 8, 7 and 6* respectively), and their relevant parts read as follows:

1968  
Feb. 5  
—  
KIKI GAVA  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

*Exhibit 8*

“Functions of post — Duties and responsibilities:

.....  
Keeping the minutes of the meetings of the Chamber and its various committees and drawing up decisions.  
Collection and production at the meetings of the files of the matters to be discussed.

Other duties :

Assistance in the execution of decisions of the above organs. Keeping cards of persons assisted out of the Sufferers’ Fund (Law 4/1962)”.

*Exhibit 7*

“Duties and responsibilities:

To act as Secretary to a Minister, Director General of a Ministry, Head of Department or other senior officer; to take down shorthand correctly and to type accurately and neatly from the shorthand notes; to register correspondence and to carry out any other duties which may be assigned to him”.

*Exhibit 6*

“Duties and responsibilities:

1968

Feb. 5

—  
KIKI GAVA  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

To perform the usual duties of an (Assistant) in charge of a schedule of work or to assist a senior or more experienced officer entrusted with duties in a Ministry; to perform any other duties which may be assigned to him”.

Questioned by Mr. Triantafyllides, Mr. Adamides, who from November, 1960, until March 31, 1965, was Administrative Officer of the Chamber, told the court that the Applicant’s duties as recorder have been those appearing in *exhibit 8* and added:

“It was part of her duty to attend meetings of committees and of the Chamber and take shorthand notes of the proceedings. The records of the proceedings of both the Chamber and the committees were prepared by Applicant in summary form on the basis of her notes. As to decisions taken in the case of the Chamber, these were formulated by the Chamber itself. In the case of committees Applicant as well as preparing the minutes would also prepare drafts of decisions taken and submit them together with the minutes for approval by me. I now come to «Άλλα καθήκοντα». The execution of decisions was my responsibility. But this involved the *communication of decisions to various offices and authorities* and Applicant would assist me in this work by drafting such communications. Applicant also acted as secretary to the committee appointed under Communal Law 4 of 1962, attending its meetings, keeping minutes and also keeping the records relating to the persons assisted. Applicant would also be charged with drafting letters quite outside the specific duties set out in *exhibit 8*”.

Mr. Artemis, who was substantive Director of the Personnel Department, Ministry of Finance, from the establishment of the Republic till February 1, 1963, and thereafter continued in that post in an acting capacity said:

“The usual duties of an (Assistant) are to assist in the administrative work of the department or the office to which he is attached. . . . . An (Assistant) may be responsible for a range of work embodied in what is known as a “schedule of work” or may simply be assisting a superior in such work. He may also be assigned duties as secretary of a committee or board or some

such body. For instance, an (Assistant) is the secretary to the Scholarships Selection Board. As such he attends meetings, keeps notes of the proceedings, prepares the minutes and executes the decisions taken. By this last phrase I mean he is responsible for seeing that the decisions taken are executed. In dealing with matters within his schedule of work an (Assistant) has to see whether the matter is governed by any legislation or administrative instruction, to point this out and to express his view as to the action to be taken”.

Questioned about the duties of a Stenographer, he said they “appear in *exhibit 8*” and continued:

“A Stenographer’s main duty consists in taking down shorthand notes and transcribing them. If she is attached to a Minister, Director General or Head of Department or other senior officer as secretary she also attends to the telephone and keeps his appointments book; she also types his correspondence from shorthand notes taken by her”.

He also referred to a decision of the Council of Ministers dated December 22, 1965 (*exhibit 1*), which reads:

“The Council decided to approve -  
.....

(a) that the posts of (Assistant) be increased by one against the post of (recorder) under the Chamber”.

and said it had been taken

“after the Ministry of Finance had submitted to the Council of Ministers the question of the comparative duties of (recorder) and (Assistant)”.

He went on :

“The Ministry pointed out that there was no analogy between the duties of (Stenographer) and those of (recorder). It was in consequence of this submission that the decision (*exhibit 1*) was taken”.

Mr. Protestos’s evidence in answer to Mr. Spanos was that in arriving at the subject decision the Commission had in mind the schemes of service *exhibits 6, 7 and 8* and also “the duties actually performed, as testified to” by Mr. Adamides

1968  
Feb. 5

KIKA GAVA  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

and Mr. Artemis; and that the Commission took that decision because they

“came to the conclusion that the duties of (recorder) were nearer to those of (Stenographer) than to those of (Assistant)”.

Later he said:

“We came to the conclusion that Applicant was essentially a stenographer, although discharging administrative duties in a narrow field”.

Questioned by Mr. Triantafyllides he said:

“In my view the decision *exhibit 1*, para. (c), was taken with a view to enabling (the Commission) to appoint Applicant to the post of (Assistant) if thought proper”.

Later he said:

“.....after Applicant’s placement the post of (Assistant) was advertised, and Applicant, having applied for that post, took part in the examination of selected candidates but was not appointed because she did not succeed in the examination”.

He continued:

“The (drawing up) of decisions is no part of a stenographer’s job; nor is the preparation of a summary of proceedings”.

Then he said:

“In deciding that Applicant’s duties as (recorder) were more nearly analogous to those of (Stenographer) than to those of (Assistant) we had in mind the respective schemes of service, not what duties Applicant had been actually discharging. Nevertheless there is nothing in Mr. Adamides’s evidence as to what work Applicant had been actually doing that is not fairly covered by *exhibit 8*. By ‘Τήρησις τῶν πρακτικῶν τῶν συνεδριάσεων’ in *exhibit 8* I understood that Applicant attended meetings and took down notes of what was said. By ‘Βοηθητικὴ ἐργασία εἰς τὴν διεκπεραίωσιν τῶν ἀποφάσεων. . . . .’ I understood searching for relevant files and production of them to the appointed officer and ensuring that decisions were communicated to those concerned.



1968  
Feb. 5

—  
KIKI GAVA  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

Before hearing Mr. Adamides I had a rough idea (‘γενική ιδέα’) of what ‘Άλλα καθήκοντα in *exhibit 8* meant. I cannot say how many committees the Chamber had, nor what the functions of each committee were. Had we considered the post of (Assistant) more nearly analogous we should have placed Applicant in that post. We disregarded the respective salary scales of the three posts as irrelevant”.

The words of s. 16(1) that I translated as “as far as possible” are ἐφ’ ὅσον τοῦτο εἶναι πρακτικῶς δυνατόν. For these the English version prepared at the Ministry of Justice has “if practically possible”. Ἐφ’ ὅσον is sometimes used in the sense of “if”. But wrong as such use is at all times, it cannot have been intended here, otherwise the result would be that the persons concerned, having been transferred by the sub-section to the service of the Republic, could be left unposted, in a sort of limbo, for a long time, if not indefinitely. No doubt then ἐφ’ ὅσον is here used in its correct sense of “as far as”. However, I need not discuss the sub-section any further because both counsel conducted their respective cases on the express footing that the Commission had a *duty* to place the Applicant *in some post*, such post being “the one most nearly analogous” to that held by her under the Chamber when the 1965 Law was passed, which correctly sums up the effect of the sub-section.

It follows that the subject decision stands or falls, not by the test by which the exercise of a discretion is controlled, but by the objective criterion of whether *in fact* the functions of the post of Assistant were, or were not, “more nearly analogous” to those of recorder than were the functions of the post of Stenographer.

Now it is not suggested by the Commission that the Applicant’s duties as recorder were entirely foreign to those of Assistant; but, Mr. Protestos said, the Commission came to the conclusion that her duties as recorder “were nearer to those of (Stenographer) than to those of (Assistant)”. This does not appear in the minutes of the subject decision (*exhibit 5*), which runs

“The Commission after considering the above functions of the post of (recorder) came to the conclusion that those functions are *more or less analogous* to the func-

1968  
Feb. 5

KIKA GAYA  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

tions of the post of (Stenographer) as set out . . . . .  
above”.

Still I am prepared to take Mr. Protestos's word. Granting, however, that the Commission applied the right test, did they apply it correctly so that *in fact* they arrived at the right conclusion? In my view they did not, for the following reasons : While both the post of recorder and that of Stenographer involved the taking of shorthand notes and transcribing them, that, in the Stenographer's case, was, as Mr. Artemis's evidence shows, the “main duty”. Mr. Protestos said that the Commission came to the conclusion that the Applicant, while “essentially a stenographer” was “discharging administrative duties in a narrow field”. However, none of the duties of Stenographer, even one “attached to a Minister . . . as secretary” may be described as “administrative”. Moreover, the duties of recorder correspond, substantially, to those performed by an Assistant as “secretary to a committee, board or some such body”. On the whole, then, the functions of the post of Assistant were “more nearly analogous” to those of recorder than were those of Stenographer. Therefore it was the Commission's duty to place the Applicant in the post of Assistant. This done she could have been employed to the best advantage by being assigned, initially at any rate, duties as “secretary to a committee, board or some such body”; and none the less so because the additional post of Assistant had been created by the Council of Ministers specially for her (she, as her counsel stated, and Mr. Spanos did not dispute, being the only recorder).

Perhaps a passing reference should be made to the evidence about the Applicant having failed, after the subject decision, in an examination for the post of Assistant. As no mention of this was made in the final address on behalf of the Respondent it is enough to say that it is quite irrelevant, if only because the Applicant's right under s.16(2) was not conditional on her passing an examination.

For the above reasons the subject decision must be, and hereby is, annulled. Further, it is hereby declared that the Applicant was entitled to be placed by the Commission in the post of Administrative Assistant, 3rd Grade; that the Commission's omission to place her in that post ought not

to have been made; and that the Commission must so place her.

In the circumstances the Applicant is entitled to costs which, taking into account the expenses of her witnesses' attendance, I fix at £30.

1968  
Feb. 5

KIKA GAVA  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

*Sub judice decision annulled.  
Declaration in terms. Order  
for costs as aforesaid.*