

1975  
June 16

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ANTONAKIS  
VAKIS  
AND ANOTHER  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

[TRIANTAFYLLIDES, P., STAVRINIDES, L. LOIZOU,  
A. LOIZOU, MALACHTOS, JJ.]

1. ANTONAKIS VAKIS,
2. SOTIRIS ELLINAS,

*Appellants,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(*Revisional Jurisdiction Appeal No. 138*).

*Public Officers—Promotions to post of Counsellor “B” in the Foreign Service of the Republic—Supernumerary appointments of others to the same post does not result in the non-existence of vacancies in the said post—And does not render the said promotions contrary to section 44 (1) (a) of the Public Service Law, 1967 (Law 33 of 1967)—Section 39 of the said Law.*

The appellants in this appeal complain against the dismissal of their recourses whereby they challenge the promotion of the interested parties to the post of Counsellor “B” in the Foreign Service of the Republic. It has been contended that the trial Judge wrongly found that there existed, at the material time, two vacant posts of Counsellor to which the interested parties could be promoted, and, that, consequently, their promotions were effected contrary to s. 44 (1) (a) of the Public Service Law, 1967 (Law 33/67) which provides that “No officer shall be promoted to another office, unless a vacancy exists in that office”. It has been argued in this respect that when the Commission was requested on March 23, 1972 to proceed with the filling of two vacancies in the above post, the said vacancies were in fact non-existent, at the time, because, earlier on, on December 14, 1971, two other members of the Foreign Service had been appointed by the Commission to the post of Counsellor, and that they should be regarded as having been appointed to fill the two vacancies in question, as no other such vacancies existed.

*Held*, (1) It is quite clear from a letter addressed to the Commission on November 19, 1971, that when the Commission

was requested to make the said two earlier appointments they were intended to be supernumerary appointments of Counsellors made as against vacant posts of Minister Plenipotentiary (see section 39 of Law 33/67).

1975  
June 16  
—  
ANTONAKIS  
VAKIS  
AND ANOTHER  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

5 (2) These supernumerary appointments were not intended to be normal appointments to the post of Counsellor and, therefore, they cannot be regarded as having filled the two vacancies in the posts to which the interested parties were prepared. Therefore this appeal which is based on the non-existence of  
10 the said vacancies has to be dismissed.

*Appeal dismissed.*

### Appeal.

Appeal against the judgment\* of a Judge of the Supreme Court of Cyprus (Hadjianastassiou, J.) given on the 15th February, 15 1974 (Case Nos. 158/72 & 159/72) whereby applicants' recourses against the promotions of the interested parties to the post of Counsellor B in the Foreign Service of the Republic were dismissed.

20 *S. Erotocritou (Mrs.)*, for the applicants.

*N. Charalambous*, Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

The judgment of the Court was delivered by:—

25 TRIANTAFYLIDIS, P.: This appeal has been made against the judgment of a Judge of this Court dismissing recourses of the appellants by means of which they have challenged two promotions to the post of Counsellor "B" in the Foreign Service of the Republic; the two persons so promoted (Michaelides and Lycourgos) are to be referred to in this judgment as the  
30 "interested parties".

It has been contended that the learned trial Judge wrongly found that there existed, at the material time, two vacant posts of Counsellor to which the interested parties could be promoted, and, that, consequently, their promotions were effected  
35 contrary to section 44 (1) (a) of the Public Service Law, 1967.

\* Reported in (1974) 3 C.L.R. 38.

1975  
June 16

ANTONAKIS  
VAKIS  
AND ANOTHER  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

(Law 33/67), which provides that "No officer shall be promoted to another office, unless a vacancy exists in that office".

The promotions were made by the respondent Public Service Commission on March 23, 1972; the Commission had been informed by a letter of the Director-General of the Ministry of Foreign Affairs, dated March 16, 1972, that there existed two vacant posts of Counsellor and that it was requested to proceed to fill them. 5

As a matter of fact the one of such posts was created by the 1972 Budget, and the other one was a post of Counsellor which had till then been left vacant due to some uncertainty about the fate of its holder (Georghiades) in the service. 10

It has been argued on behalf of the appellants that the said vacancies were in fact non-existent, at the time, because, earlier on, on December 14, 1971, two other members of the Foreign Service (Papademas and Nicolaides) had been permanently appointed by the Commission to the post of Counsellor, and that they should be regarded as having been appointed to fill the two vacancies in question, as no other such vacancies existed. 15

We cannot accept the above argument as a valid one because when the Commission was requested to make the said two earlier appointments they were intended to be supernumerary appointments of Counsellors made as against vacant posts of Minister Plenipotentiary; this is quite clear from a letter addressed to the Commission on November 19, 1971. The Commission had been thus invited to act then under section 39 of Law 33/67, which provides that "Whenever there is a vacancy in a public office which, owing to the absence of any candidate possessing the qualifications required, cannot be filled, the Commission may, at the request of the appropriate authority concerned, make a supernumerary appointment in another office of lower status and salary in the same Department"; and it is not in dispute that the post of Minister Plenipotentiary is a post immediately above that of Counsellor in the Foreign Service. 20  
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It might be said that it is to be derived from the provisions of section 39 that a supernumerary appointment is of a temporary nature; but even if, for this reason, the aforesaid two permanent supernumerary appointments were made contrary to section 39, we cannot annul them in the present proceedings 40

because they are not the subject matter of such proceedings; it is up to the administration to take whatever action is necessary in order to rectify the position; the fact remains that these supernumerary appointments were not intended to be normal appointments to the post of Counsellor and, therefore, they cannot be regarded as having filled the two vacancies in the posts to which the interested parties were promoted; especially, as one of such vacancies came into existence *after* the supernumerary appointments, and the other such vacancy was one which, though existing at that time, was not being filled in view of the already mentioned uncertainty of the fate in the service of another officer.

There is, indeed, nothing on record which can be taken as showing that it was intended that the two supernumerary appointments were to be regularized by making them as against the vacancies in respect of which the *sub judice* promotions were made.

In the light of all the foregoing we agree with the trial Judge that there did exist the two vacancies of Counsellors to which the interested parties were promoted and, therefore, this appeal which is based on the ground of the non-existence of such vacancies has to be dismissed.

Taking, however, into account the rather special circumstances of this case we are not prepared to make any order as to costs against the appellants.

*Appeal dismissed. No order as to costs.*