

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ISMINI GEORGHIOU AND OTHERS,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

ISMINI
GEORGHIOU
AND OTHERS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

(Case No. 166/72).

Public Officers—Promotions—Secondment to post of Printer 2nd Grade—Head of Department holding his office without lawful authority through having been appointed thereto in a manner contrary to section 42 of the Public Service Law, 1967 (Law 33 of 1967)—His recommendations materially affecting the minds of the respondent Public Service Commission—Sub judice secondment annulled.

Head of Department—Holding office in a manner contrary to s. 42 of the Public Service Law, 1967—Secondment by Public Service Commission based on his recommendations—Annulled.

From the minutes of the respondent Commission relating to the *sub judice* secondment it appeared that one of the factors taken into consideration in making the said secondment were the recommendations of the officer who appeared as the Acting Director of the Government Printing Office. The said officer was assigned by the Ministry of Finance the duties of the Director of the Government Printing Office after the death of its Director.

Counsel for applicants argued that the presence of the said officer at the meeting of the respondent Commission and the exercise of duties of Director were illegal as being contrary to section 42 of the Public Service Law, 1967, since he was not appointed as such by the Public Service Commission on the recommendation of the Ministry of Finance, but he was directly appointed by the said Ministry.

Held, (1) The acting appointment of the said officer should have been made by the respondent Commission on the

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recommendation of the Ministry of Finance and not by the Ministry itself. Therefore he was acting as Director at the material time without lawful authority and as such was not entitled to appear before the respondent Commission and express his views.

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(2) This, however, does not automatically render the *sub judice* decision *null* and *void*. The most significant consideration for the determination of the legality of such decision is whether the recommendations of the said officer materially affected the minds of the respondent Commission in taking the decision complained of. And as it is obvious that what has materially affected the minds of the members of the Commission in selecting the interested party, were the said recommendations, the *sub judice* decision is declared *null* and *void*.

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Sub judice decision annulled.

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Recourse.

Recourse against the decision of the respondent by virtue of which the interested party was seconded to the Temporary (Ord.) post of Printer 2nd Grade, in the Government Printing Office, in preference and instead of the applicants.

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K. Talarides, for the applicants.

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

Cur. adv. vult.

The facts sufficiently appear in the judgment of the Court delivered by:-

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MALACHTOS, J.: The three applicants in this recourse claim a declaration of the Court that the decision of the Public Service Commission, which was published in the Official Gazette of the Republic dated 16th June, 1972, under Not. No. 1146 by virtue of which Niki Artemiou was seconded to the Temporary (Ord.) post of Printer 2nd Grade, in the Government Printing Office, is *null* and *void* and of no legal effect whatsoever.

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The relevant facts are as follows:

By letter dated 8th March, 1972 the Director-General of the Ministry of Finance informed the Chairman of the Public Service Commission that the Minister of Finance had agreed to

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the filling of one vacancy in the post of overseer of works as well as any consequential vacancies in the Government Printing Office and requested that the Commission should proceed with the filling of the said vacancies.

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5 At its meeting of the 18th March, 1972, the Commission decided that the vacancy in question, as well as the consequential vacancies of supervisor, senior printer and printer 2nd Grade, be considered on 24th April, 1972. According to the relevant scheme of service, *exhibit 2*, the post of printer 2nd grade, is a promotion post from the immediately lower post of printers' assistant with the following duties and responsibilities:

Composition, machining, book-binding, warehouse and clerical work.

15 The qualifications required are: Training and experience in the performance of any of the above duties. Good knowledge of Greek or Turkish and knowledge of English up to the standard of the English Lower of the Cyprus Certificate of Education.

20 There is a combined establishment for printers 1st and 2nd Grade.

25 At its meeting of 24th April, 1972, the Commission proceeded to fill, *inter alia*, the consequential vacancy in the post of printer 2nd grade and Mr. Charalambos Hji Panayiotou who was then performing the duties of officer in charge of the Printing Office was present and expressed his views.

30 Miss Niki Artemiou, the interested party in this recourse, was seconded to the Temporary (Ord.) Post of Printer 2nd Grade, a post which was held by Miss Ersie Michaelides, who was on the same day permanently appointed as Printer 2nd Grade.

The relevant minutes of the respondent Commission, *exhibit 14*, read as follows:

35 "The Commission considered the merits, qualifications, seniority and experience of all officers serving in the post of Printers' Assistant. The Commission considered at the same time the merits, qualifications, seniority and experience of all officers serving in the temporary (Ord.) post of Printer, 2nd Grade. The personal Files and the Annual

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Confidential Reports of all the above candidates were also taken into consideration.

Mr. Hji Panayiotou stated that Miss Ersie Michaelidou, who is holding on secondment the temporary (Ord.) post of Printer, 2nd Grade, is very good in her work and recommended her for appointment to the permanent post.

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With regard to the candidates serving in the post of Printers' Assistant, Mr. Hji Panayiotou recommended Miss Niki Artemiou for the temporary (Ord.) post of Printer, 2nd Grade.

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Bearing in mind all the above, the Commission decided that the following officers were on the whole the best and that they be promoted/seconded to the post of Printer, 2nd Grade, w.e.f. 15.5.72, as shown below:

Ersie Michaelidou — to be promoted to the permanent post.

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Niki Artemiou — to be seconded to the temporary (Ord.) post”.

As a result the three applicants feeling aggrieved by the above decision of the respondent Commission filed the present recourse.

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It is clear from the minutes of the respondent Commission, *exhibit 14*, that one of the factors taken into consideration were the recommendations of Mr. Hji Panayiotou, who appeared as the acting Director of the Government Printing Office and recommended the interested party for the temporary (Ord.) post of Printer 2nd Grade. This gave rise to an additional ground of law put forward by counsel for applicants during the hearing of this recourse, namely, that the presence of Mr. Hji Panayiotou at the meeting of the Public Service Commission of the 24th April, 1972, as the acting Director of the Government Printing Office was irregular because he was appointed as such by the Ministry of Finance and not by the Public Service Commission contrary to section 42 of the Public Service Law, 1967.

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It is not in dispute that Mr. Hji Panayiotou, an Economic Officer 1st Grade at that time, was assigned by the Ministry of Finance the duties of the Director of the Government Printing Office after the death of the late Mr. A. Kleanthous which

5 occurred on 23/3/69. This is clear from a letter dated 29/3/69, *exhibit 7*, addressed by the Director-General of the Ministry of Finance to the three supervisors of the Government Printing Office which office is under the said Ministry, to the effect that due to the death of the late Director of the Government Printing Office Mr. A. Kleanthous, its general supervision would be undertaken till further instructions by Mr. Hji Panayiotou, to whom they had to apply for any matter that might arise.

10 As it appears from a letter dated 5/8/72, *exhibit 11*, addressed by the Ministry of Finance to the Accountant-General, Mr. Hji Panayiotou was in charge of the Government Printing Office upto 1/8/72 when the said post was filled up permanently.

15 Counsel for applicants argued that the exercise of duties of Director of the Government Printing Office by Mr. Hji Panayiotou was illegal as being contrary to section 42 of the Public Service Law, 1967, since he was not appointed as such by the Public Service Commission on the recommendation of the Ministry of Finance, but he was directly appointed by the said
20 Ministry.

Section 42 reads as follows:

25 “ 42. (1) When an office is vacant for any reason or its holder is absent on leave, or incapacitated, another person may be appointed to act in that office under such terms as may be prescribed.

(2) An acting appointment shall be made on the recommendation of the appropriate authority concerned”.

30 He further argued that not only Mr. Hji Panayiotou was not entitled to be present at the meeting of the Public Service Commission and express his views but also he had no right to sign the Annual Confidential Reports of the applicants and the interested party either as the reporting or as the countersigning officer. In fact, Mr. Hji Panayiotou signed the Confidential Reports of the applicants and the interested party both as
35 reporting and as countersigning officer for the years 1969, 1970 and 1971.

40 On the other hand, counsel for the respondent submitted that the duties of the Director of the Government Printing Office, were lawfully assigned to Mr. Hji Panayiotou on the basis of the existing practice relating to public service and

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public officers, in the absence of any regulations made under section 86 (1) of the Public Service Law, 1967. This section reads as follows:

“ 86.—(1) The Council of Ministers may make Regulations, to be published in the official Gazette of the Republic, for the better carrying into effect of the provisions of this Law and for regulating generally any matter concerning the Commission, the public service and public officers: 5

Provided that until such Regulations are made or any matter is otherwise prescribed under this Law, any regulations or public instruments and the General Orders and administrative instructions contained in circulars or otherwise and the existing practice relating to the public service and public officers shall continue to be applicable in so far as they are not inconsistent with the provisions of this Law”. 10 15

I must say that this submission of counsel cannot stand in view of the wording of the proviso to subsection 1 of section 86, since the existing practice, which was followed in the case in hand, is clearly inconsistent with the provisions of section 42 of the law. The acting appointment of Mr. Hji Panayiotou should have been made by the respondent Commission on the recommendation of the Ministry of Finance and not by the Ministry itself. Therefore, Mr. Hji Panayiotou was acting as Director of the Government Printing Office at the material time without lawful authority, and as such was not entitled to appear before the respondent Commission, and express his views. This, however, does not automatically render the said *sub judice* decision of the respondent Commission *null* and *void*. The most significant consideration for the determination of the legality of the said decision is whether the recommendations of Mr. Hji Panayiotou materially affected the minds of the respondent Commission in taking the decision complained of. 20 25 30

It is clear from the comparative table, exhibit 1, showing the particulars of the government service and qualifications of the applicants and the interested party, that the applicants are by eight years senior to the interested party and are relatively better qualified. On the question of merit there is nothing in the documentary evidence adduced to suggest that the interested party was strikingly superior to the applicants. Obviously, 35 40

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5 what has materially affected the minds of the members of the respondent Commission in selecting the interested party for secondment to the post in question, were the recommendations of Mr. Hji Panayiotou. Had it not been for the said recommendations, it is doubtful whether the interested party would have been selected for the said post.

10 For the above reasons the decision of the respondent Commission by which the interested party Niki Artemiou was seconded to the Temporary (Ord.) post of Printer 2nd Grade, is declared *null and void*.

In view of my above decision I consider it unnecessary to deal with the other grounds on which the application is based.

The respondent to pay to the applicants the sum of £25.— against their costs.

15 *Sub judice decision annulled.*
Order for costs as above.