

1986 February 15

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

PANOEBUS TSOUNTAS AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION.

Respondent.

(Case No. 278/81).

5 *Legitimate interest—Public Officers—Appointments—First Entry and Promotion post—Applicants serving as Clerks, 2nd Grade in the General Clerical Staff—Interested party selected for appointment to the post of Archivist, 1st*
10 *Grade at the House of Representatives which few days later became by operation of Law a post of Clerk, 1st Grade in the General Clerical Staff—Emplacement of interested party to the said post of Clerk, 1st Grade—Applicants had not sought appointment to the said post of Archivist—Neither the appointment to the post of Archivist nor the subsequent emplacement of interested party to the said post of Clerk affected applicants' legitimate interest.*

15 The interested party was one of the candidates for appointment to the post of Archivist, 1st Grade, at the House of Representatives a first entry and promotion post. None of the applicants applied for appointment to the said post.

20 On the 9.4.81 the Public Service Commission offered the appointment to the interested party, who accepted it on 15.4.81.

By virtue of the Supplementary Appropriation Law 20/81, promulgated on the 22.4.81, a re-organisation of the Public Service was sanctioned and the two posts of Archivist, 1st Grade, at the House of Representatives became posts of Clerks, 1st Grade and 2nd Grade in the General Clerical Staff. 5

In view of the said developments the respondent Commission emplaced the interested party to the post of Clerk, 1st Grade, as from 15.6.81.

As a result the applicants, who, at all material times were serving as Clerks, 2nd Grade, in the General Clerical Staff, filed the present recourse. 10

Held, dismissing the recourse, that as none of the applicants had applied for appointment to the said post of Archivist, which later became by operation of Law a post of Clerk, 1st Grade, neither the selection of the interested party to the post of Archivist nor his subsequent emplacement to the post of Clerk, 1st Grade affected applicants' legitimate interest. 15

Recourse dismissed. 20
No order as to costs.

Recourse.

Recourse against the decision of the respondent to promote the interested party to the post of Clerk 1st Grade in the General Clerical Staff in preference and instead of the applicant. 25

E. Lemonaris, for the applicants.

A. Papasavvas, Senior Counsel of the Republic, for the respondents.

A. S. Angelides, for the interested party. 30

Cur. adv. vult.

TRIANAFYLLIDES P. read the following judgment. In the present case the applicants are challenging the decision of the respondent Public Service Commission, published in the Official Gazette on the 19th June 1981, by means 35

of which Th. Adamou (to be referred to hereinafter as the "interested party") was appointed to the post of Clerk, 1st Grade, in the General Clerical Staff.

5 The recourse was initially filed by one hundred and sixty-nine applicants but while it was pending before the Court applicants Nos. 14, 15, 16, 74, 75, 77, 103, 119, 135, 146 and 147 filed notices of withdrawal and on the 25th January 1984 this case was dismissed in so far as such applicants were concerned.

10 The salient facts of this case are the following:

On the 30th August 1980 the House of Representatives, with the consent of the Ministry of Finance, requested the respondent Public Service Commission to take all necessary steps for the filling of the permanent post of
15 Archivist, 1st Grade, at the House of Representatives.

As such post was a first entry and promotion post the vacancy in it was advertised in the Official Gazette and thirty-seven persons, one of whom was the interested party, applied for appointment. None of the applicants in the
20 present recourse applied for appointment to the post concerned.

As a result of a re-organisation of the public service the two posts of Archivist, 1st Grade, at the House of Representatives were to become posts of Clerks, 2nd Grade and 1st Grade, in the General Clerical Staff. In view of
25 this the Ministry of Finance asked the respondent Commission not to proceed to fill the vacant post of Archivist, 1st Grade, at the House of Representatives, but, as the House of Representatives insisted that it should be filled
30 and did not, as the appropriate authority withdraw its request to the Commission that such post should be filled, the Commission, acting on the basis of the provisions of section 17 of the Public Service Law, 1967 (Law 33/67),
35 proceeded, on the 9th April 1981, to offer appointment to such post to the candidate already selected for such purpose, who was the interested party, and who accepted it on the 15th April 1981.

The aforementioned re-organisation of the public service was sanctioned by the Supplementary Appropriation Law, 1981 (Law 20/81), which was promulgated in the Official Gazette on the 22nd April 1981. By virtue of such Law the two posts of Archivist, 1st Grade, at the House of Representatives became posts of Clerks, 1st Grade and 2nd Grade, in the General Clerical Staff. 5

In view of the aforesaid developments the respondent Commission, acting, also, on the strength of legal advice given to it by the Attorney-General's Office, decided to emplace the interested party in the post of Clerk, 1st Grade, in the General Clerical Staff as from the 15th June 1981. 10

As a result the present recourse was filed by the applicants, who, at all material times, were serving as Clerks, 2nd Grade, in the General Clerical Staff. 15

Counsel for the respondent Commission and for the interested party have raised, as a preliminary objection, the issue that the applicants have no legitimate interest, in the sense of Article 146.2 of the Constitution, entitling them to file the present recourse, since they never applied for appointment to the post of Archivist, 1st Grade, as they could have done. 20

I am of the opinion that as the applicants did not seek appointment to the post of Archivist, 1st Grade, at the House of Representatives they cannot validly contend that a legitimate interest of theirs, in the sense of Article 146.2 of the Constitution, was in any way affected by the selection of the interested party by the respondent Commission for appointment to such post. 25

Nor was there affected, adversely and directly, any legitimate interest of the applicants, in the sense of Article 146.2 of the Constitution, by the subsequent emplacement of the interested party in the post of Clerk, 1st Grade, because none of the applicants applied for appointment to the post of Archivist, 1st Grade, at the House of Representatives which became later, by operation of Law 20/81, a post of Clerk, 1st Grade, in which the interested party 30 35

was emplaced not instead of any one of the applicants and, in any event, independently of any claim of any one of them to be promoted.

5 In the light of all the foregoing I am of the view that the applicants were not entitled under Article 146 of the Constitution to file the present recourse, which is dismissed accordingly; but with no order as regards its costs.

Recourse dismissed.

No order as to costs.