

1986 September 8

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

CHARALAMBOS CHRISTODOULIDES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMITTEE,

Respondent.

(Case No. 51/80).

Time within which to file a recourse—Constitution, Article 146.3—Sub judice act confirmatory of an earlier act—Recourse not filed within 75 days from the communication of the earlier act—Recourse out of time.

5 On 19.5.79 the applicant applied for the fifth time to be emplaced in the post of Technologist Scale B.12.

10 The four previous applications of the applicant were rejected on the ground that his qualifications did not satisfy all the relevant requirements of the scheme of service. The fifth application was not rejected on the said ground, because the respondent Committee found that the requirements of the scheme of service were satisfied, but on the ground that there were no vacancies in the post in question. The decision was communicated to the applicant by letter dated 29.11.79. On 20.12.79 the applicant once again submitted his said application. The application was again rejected on the ground that there was no vacancy in the post in question and, as a result the present recourse was filed.

20 *Held*, dismissing the recourse, that as the sub judice decision is confirmatory of the decision communicated by the letter dated 29.11.79, the present recourse was filed

out of the time of 75 days prescribed by Article 146.3 of the Constitution.

Recourse dismissed.

No order as to costs.

Recourse.

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Recourse against the refusal of the respondent to emplace applicant in the post of Technologist, Scale B. 12.

L. N. Clerides, for the applicant.

R. Gavrielides, Senior Counsel of the Republic, for the respondent.

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Cur. adv. vult.

MALACHTOS J. read the following judgment. The applicant in this recourse claims a declaration of the Court that the act and/or decision of the respondents of the 16.1.80 by which they rejected his application to be emplaced in the post of Technologist, Scale B. 12. is null and void and of no legal effect whatsoever.

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The relevant facts of the case are as follows:

The applicant was appointed, on probation, to the permanent post of Instructor in Secondary Education on Scale B. 10 from 21.9.72.

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On 3.11.72 he applied to the Committee of Educational Service to be emplaced in the post of Technologist, scale B. 12. The Committee of Educational Service referred his application to the Evaluation Committee which gave the following opinion:

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"The Committee is of the opinion that the qualifications of the applicant, as they appear in Note (1) of File PMP 5258/2, DO NOT satisfy all the requirements of the Scheme of Service for a Technologist, Scale B. 12, because the said qualifications do not constitute a 'Degree/Diploma... of the standard of B.Sc. Engineering, or an equivalent qualification...'. As regards the letter dated 10.3.72 of the office of the British Council in Nicosia to some other person

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(Mr. A. Morfakis) it is hereby explained that the phrase 'in corresponding subjects' restricts the actual value of the said Diploma and supports the view that this is NOT equivalent to the B.Sc., (Eng.) degree of a British University, i.e. the Diploma is equivalent to only some of the subjects of the B.Sc. (Eng.), which correspond to similar ones to those of the Diploma.

The views of the Committee contained in the above paragraphs are also supported by the book 'Higher Education in the United Kingdom' which is published every two years by the British Council and the Association of Commonwealth Universities."

The Committee of Educational Service at its meeting of 9.2.73 decided, inter alia, as follows:

"... having taken into consideration the above views of the Evaluation Committee, as well as the facts and documents before it, finds that the qualifications of the applicant did not satisfy the requirements of the Scheme of Service for a 'Degree/Diploma of a University or a Higher School or Institution of the standard of B. Sc. (Eng.) or equivalent qualification... as these are not of the standard of B. Sc. (Eng.). For this reason it rejects the application of the above Instructor".

The applicant was accordingly notified by letter dated 10.2.73.

The applicant on 15.2.73, 30.3.75 and 8.7.75 applied again but each time his application was rejected for the same reasons as those in application of 3.11.72.

On 19.5.79 the applicant applied once more. The Evaluation Committee this time gave the following opinion:

"The Committee having considered all the facts which are presented by the applicant, is of the opinion that his qualifications are equivalent to the B. Sc. University degree."

On 27.11.79 the Committee of Educational Service reached, inter alia, the following decision:

“The Committee having taken into consideration all the facts and documents placed before it, as well as the above views of the Evaluation Committee, finds that the qualifications of the applicants are equivalent to the B. Sc. degree. Since, however, there are no vacant posts of Technologists (the number of these posts is fixed by the Budget), the possibility of their emplacement to the post in question will be considered when and if there is such a post, together with the cases of other Instructors possessing the qualifications for the post of Technologist.”

The Committee of Educational Service notified the applicant of its above decision by letter dated 29.11.79.

On 20.12.79 the applicant applied through his advocate, for emplacement to the post of Technologist. He received the following reply dated 16.1.80:

“In reply to your letter dated 20.12.79, Ref. KK/A in respect of the above matter, we hereby inform you that the application in question cannot be accepted as there is no vacant post for a Technologist. This matter will be examined if and in the event of vacant posts of Technologists being available, and together with the cases of other Technologists who hold the post of Instructor”.

It is clear from the above facts that the decision of the respondent Committee complained of, contained in its letter of 16.1.80, is a confirmatory one of its previous decision contained in its letter of 29.11.79, and so the recourse was filed out of the time of 75 days prescribed by Article 146.3 of the Constitution.

This recourse is, therefore, dismissed.

On the question of costs I make no order.

Recourse dismissed.
No order as to costs.