1986 June 4

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

LOUKIA KYRIAKIDOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE EDUCATIONAL SERVICE COMMISSION,
2. THE MINISTRY OF EDUCATION,
3. THE COUNCIL OF MINISTERS,

Respondents.

(Case No. 785/85).

The Rule of Law—Administrative Authorities—Do not have power to arbitrate on the validity of laws or regulations—Provided the regulations emanate from a body competent in law to make them, administrative authorities should observe and give effect to them.

Administrative Law—Administrative Authority vested with discretionary powers—Not entitled to subordinate the discretion to another organ—The discretion should be exercised by such authority by reference to the criteria set out in the law and the principles of sound administration

The Educational Officers (Teaching Personnel) (Appointments, Placements, Transfers, Promotions and Ancillary Matters) Regulations, 1972—Reg. 5—The table of priorities—Educational Service Commission did not have a discretion, but they were bound to implement such table.

The applicant in these proceedings complains that the interested parties were appointed on a contractual basis as teachers of mathematics for the first term of the school year commencing in September, 1984, in breach of the

right of the applicant to prior appointment safeguarded by the table of priorities (hereafter "the table"), prepared by the Ministry of Education pursuant to Reg. 5 of the Educational Officers (Teaching Personnel) (Appointments, Placements, Transfers, Promotions and Ancillary Matters) Regulations, 1972.

The serial number of the applicant in the "table" was 52, whilst the serial number of the interested parties were 59 and 78 respectively. The reason why the respondents disregarded the "table" was the fact that they gave effect and implemented a decision of the Council of Ministers dated 2.8.85 to renew the appointment of educationalists, who were contractually employed in the service prior to the school year 1984-85.

Counsel for the respondents and counsel for the interested parties argued that in view of the decision in *Savva* v. *The Republic* (1986) 3 C.L.R. 445 declaring the said Regulations ultra vires the enabling law the respondents had no duty to observe the Regulations or give effect to the priorities inherent therein.

Held, annulling the sub judice decision: (1) Provided the regulations emanate from a body competent in law to make them, Public Authorities are bound to observe them and give effect to them. Until laws are pronounced by a competent authority to be unconstitutional, or Regulations to be invalid, organs of public administration must heed their provisions and act subject and in accordance with them. Otherwise, power would be acknowledged to arbitrate on the validity of laws and regulations.

(2) Every Administrative Authority vested with discretionary powers must themselves assume the exercise of the power and exercise it effectively by reference to the criteria set out in the law and the principles of sound administration. Subordination of the exercise of their power, as it happend in this case, necessarily invalidates their decision, for it is not a decision emanating from the organ specified in the law. The law did not entrust either the Council of Ministers or the Ministry of Education with the appointment of teachers in the Public Educational

Service. The power vested solely and exclusively in the respondent Commission *(Papakyriacou* v. *Republic* (1983) 3 C.L.R. 870 followed).

(3) Observance of the priority safeguarded by the "table" was not a matter of discretion; a mandatory duty to implement it was cast upon the respondents. Supposing, however, that they had discretion in the matter, the sub judice decision could not again stand the test of judicial scrutiny for lack of cogent reasons justifying departure therefrom.

Sub judice decision annulled.
No order as to costs.

Cases referred to:

Savva v. *The Republic* (1986) 3 C.L.R. 445;

Kapsou v. *The Republic* (1983) 3 C.L.R. 1336;

Psara-Kronidou v. *The Republic* (1985) 3 C.L.R. 1900;

PapaKyriacou v. *The Republic* (1983) 3 C.L.R. 870.

Recourse.

Recourse against the decision of the respondents to appoint the interested parties as teachers of mathematics in preference and instead of the applicant in disregard of the Table of priorities for appointment prepared by the Ministry of Education pursuant to reg. 5 of the Educational Officers (Teaching Personnel) (Appointments, Placements, Transfers, Promotions and Ancillary Matters) Regulations, 1972.

A. S. Angelides, for the applicant.

R. Vrahimi (Mrs.), for the respondents.

Ph. Valiantis, for interested party *Zahos,*

A. Haviaras, for interested party *Sergides.*

Cur. adv. vult.

PIKIS J. read the following judgment. Applicant, a qualified teacher of mathematics, was listed 52nd in the table of priorities, hereafter "the Table", prepared by the Ministry of Education pursuant to the provisions of regulation 5 of the Educational Officers (Teaching Personnel) (Appointments, Placements, Transfers, Promotions and Ancillary Matters) Regulations, 1972. The Table showed the candidates due for appointment in the Public Educational Service and determined the order in which they would be appointed. In effect, it gave the candidates a serial number for appointment in the Service. The Table was compiled by reference to the criteria enumerated in the Regulations taking account of the academic qualifications, performance and date of graduation of the candidates.

The complaint of the applicant in these proceedings is that respondents disregarded the Table and acted in contravention thereto by appointing the interested parties as teachers of mathematics in preference to her. By the decision of the respondents of 30th August, 1984, the subject matter of these proceedings, the interested parties were appointed on a contractual basis as teachers of mathematics for the first term of the school year commencing in September, 1984. The contention that interested parties were favoured in breach of the right of the applicant to prior appointment safeguarded by the Table, is well founded. The serial number of the interested parties Zahos and Sergides was 59 and 78, respectively; whereas that of the applicant, we repeat, was 52.

The challenge mounted against the decision is not confined to the prejudice of her rights stemming from the compilation of the Table. It is questioned as invalid for a second, a wholly different reason, namely, subordination of the discretionary power of the respondents' to a directive of the Ministry of Education.

Both complaints are in my judgment valid and similarly warrant the annulment of the decision. Observance of the priority safeguarded by the Table was not, in accordance with the Regulations, a matter of discretion; a mandatory duty to implement it was cast on the respondents. Supposing

they had a discretion, their decision could not again stand the test of judicial scrutiny in the absence of indication of any reasons for departure therefrom. Only cogent reasons specifically recorded could justify deviation therefrom, assuming any discretion vested in the respondents to depart from them. Why the respondents disregarded the Table is evident from the events that preceded the decision. The Council of Ministers decided on 2.8.85 to renew the appointment for the ensuing school year of educationalists who were contractually employed in the educational service prior to the school year 1984-85. The decision was passed on to the Educational Service Commission by the Ministry, coupled with a suggestion to give effect to it. Study of the events preceding and surrounding the decision leaves no doubt that in taking the sub judice decision the respondents did no more than give effect to the decision of the Council of Ministers. They appointed everyone covered by the decision of the Council of Ministers. They relinquished in effect the exercise of the discretionary powers vested them by law (Law 10/69), making them the sole vestees of the power to appoint teachers in the public educational service.

Counsel for the respondents argued the respondents had no duty to observe the Regulations or give effect to the priorities inherent therein for by a subsequent judicial pronouncement. *Savva* v. *Republic*[1], the Regulations were declared ultra-vires the enabling law. Counsel for the interested parties espoused this submission.

On principle, as well as on authority, the above proposition is untenable. An administrative organ and every public Authority must observe the law as laid down in the Constitution, the Statute Book and Regulations made thereunder. Provided the regulations emanate from a body competent in law to make the regulations, they have no discretion but to observe them and give effect to them. This is a basic norm of legality and a fundamental precept for the sustenance of the rule of law. Until laws are pronounced by a competent authority to be unconstitutional, or regulations to be invalid, organs of public administration must heed their provisions and act subject and in accordance with them. Otherwise,

[1] Recourse No. 361/83, decided on 8.3.86 and published in (1986) 3 C.L.R. 445 (a decision of Triantafyllides, P.).

power would be acknowledged to administrative Authorities to arbitrate on the validity of laws and regulations. The above principles find full expression in the caselaw of the Supreme Court (see, inter alia, *Kapsou* v. *The Republic*[1]; *Psara-Kronidou* v. *The Republic*[2]). The above cases reflect the approach of Greek Courts as well, as noted in the judgments of the Supreme Court. It appears to me that the proposition is one of universal application for any countries striving to attain government under the law.

However, in order to remove any ambiguity as to the reasons for non observance by the respondents of the regulations, it must be clarified there is no suggestion in their decision that the regulations were treated as invalid. The sole reason for departing therefrom appeared to be the recommendations of the Ministry of Education. And this is, as earlier noted, an additional reason for annulling their decision. Every administrative Authority vested with the exercise of discretionary powers must, as a condition of the validity of its decision, themselves assume the exercise of the power and exercise it effectively by reference to the criteria set out in the law and the principles of sound administration. Subordination of the exercise of their power, as it happened in this case, necessarily invalidates their decision for it is not a decision emanating from the organ specified by law. And as such, it is vulnerable to be set aside for both abuse of power, as well as excess of power. The law did not entrust either the Council of Ministers or the Ministry of Education with the appointment of teachers in the Public Educational Service. The power vested solely and exclusively in the Educational Service Commission. Invalidity is the inevitable consequence attending abdication or surrender of administrative discretion. This is made abundantly clear by the numerous decisions of the Supreme Court. Specific reference need only be made to a decision of the Full Bench, that in *Papakyriacou* v. *Republic*,[3] bearing direct relevance to the facts of the present case. In that case as well, the respondents disregarded tables of priority in order to give effect to a decision of the Council of

[1] (1983) 3 C L R 1336
[2] (1985) 3 C L R 1900
[3] (1983) 3 C L R 870, 871

Ministers. The decision was declared invalid for exceeding their powers. The Court noted that respondents instead of holding an inquiry into the suitability of candidates in accordance with statutory criteria, they confined their task to approving the decision of the Council of Ministers; as indeed they appeared to have done in this case. The fate of the decision here under review, cannot be any different.

For the reasons given above, the decision is annulled. Let there be no order as to costs.

Sub judice decision annulled.
No order as to costs.