

1988 September 14

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRYSO DEMOSTHENOUS,

Applicant,

v.
THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF FINANCE AND/OR
THE ACCOUNTANT-GENERAL AND/OR
THE DIRECTOR OF THE PUBLIC ADMINISTRATION AND PERSONNEL SERVICE,

Respondents.
(Case No. 690/87).

5 *Public Officers—Temporary Officers—Scheme of service regulating advancement from scale A2 to scale A5—Decision restricting applicant's remuneration, which had advanced to scale A5, to the top of scale A2—Annulled on ground of erroneous interpretation by the respondents of the provisions of the scheme.*

The facts of this case appear sufficiently in the judgment of the Court.

Sub judice decision annulled.
No order as to costs.

Recourse.

10 Recourse against the decision of the respondents to cut applicant's salary and restrict her remuneration to the top of salary scale A2.

L. Kaloyirou for X. Xenopoulos, for the applicant.

S. Matsas, for the respondents.

15

Cur. adv. vult.

PIKIS J. read the following judgment. On 1st November, 1978, Chryso Demosthenous, the applicant, was appointed machine operator in the Department of Personnel. Her appointment was temporary, a status that remained unaltered till today. In 1981 her post was converted to that of clerk second grade by virtue of the provisions of Law 20/81 providing for the restructure of government departments. 5

The position of Clerk Second Grade is remunerated in accordance with scale A2 of government salary scales, combined with scale A5. The scheme of service regulates the terms and conditions under which the holders of the position of clerk second grade can advance from scale A2 to scale A5 and become Clerks First Grade. 10

In the year 1982 the applicant reached the top scale of A2 and thereafter progressed salarywise to scale A5, an advance that continued until June 1987 when her salary was cut and her remuneration restricted to the top scale of A2. In answer to her complaint ventilated by her advocate, the respondents replied that she was restored to scale A2, a position consonant with the relevant provisions of the scheme of service regulating progress from scale A2 to scale A5. Her earlier advance was founded on a mistake on the part of the Administration in the interpretation and application of the relevant scheme of service - a position espoused by counsel for the Republic before me. Counsel for the applicant submitted that the sub judice decision is founded on a misinterpretation of the provisions of the scheme of service affecting holders of the position of clerk second grade, established and unestablished. The case for the respondents is that only holders of an organic position of clerk second grade can, under any circumstances, progress to scale A5. 15
20
25
30

And inasmuch as the applicant was unestablished because of failure to comply with a particular requirement of the scheme of service for permanent appointment, namely, success in government examinations, she could not progress beyond scale A2. For his part, counsel for the applicant submitted that a permanent ap- 35

pointment is not a prerequisite in accordance with the "Notes" appended to the scheme of service, regulating salary advance from scale A2 to scale A5.

5 After careful study, I have come to the conclusion that the position put forward on behalf of the applicant, is correct. Below, I explain the reasons:

10 In note 2(a) appended to the scheme of service, it is envisaged that for progress to scale A5, clerks second grade on scale A2 should pass a certain examination other than the examination earlier provided for permanent appointment to the post of clerk second grade. From this requirement are exempted employees who formerly held the position of machine operators, like the applicant. In Note 2(a) it is specifically stated that the term "employee" includes, for the purpose of advance from scale A2 to scale A5, permanent as well as temporary personnel; a provision that contradicts directly the view advanced by counsel for the respondents. The object of the scheme, as it is clear to me, was to make a like provision for the advance of clerks second grade to scale A5, independently of whether they held an organic post. In the case of both categories of personnel, success in the examination contemplated by Note 2(a), was necessary except in respect of employees in the position of the applicant who were formerly machine operators. Thus the applicant did not have to pass the examinations contemplated by Note 2(a). And as her temporary status was not an impediment to moving from one scale to the next, there was no justification for the decision of the respondents challenged in these proceedings. She remains a temporary employee; nonetheless she is entitled to advance salary-wise as laid down in the scheme. I must, therefore, annul the decision.

30 Consequently, I declare it to be wholly void and of no effect, pursuant to the provisions of para. 4(b) of article 146 of the Constitution. Let there be no order as to costs.

Sub judice decision annulled.

No order as to costs.