

1988 February 29

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MARIA CHRISTOUDHIA,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE DIRECTOR OF PUBLIC ADMINISTRATION
AND PERSONNEL SERVICE,

Respondents.

(Cases No. 667/86).

Legitimate interest—Acceptance without reservation of appointment in the Public Service—Deprives acceptor of legitimate interest to challenge any aspect of the appointment or terms of service.

Executory act—Confirmatory act—An act confirmatory of an earlier one is not justiciable under Art. 146 of the Constitution.

5 *Executory act—Informative act—An informative act is not justiciable under Art. 146.1 of the Constitution.*

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

*Recourse dismissed.
No order as to costs.*

10 **Recourse.**

Recourse against the decision of the respondent to place applicant on the starting point of the salary scale upon appointment to the post of temporary Clerical Assistant.

Chr. Christoforou, for the applicant.

L. Koursoumba (Mrs), for the respondents.

Cur. adv. vult.

PIKIS, J. read the following judgment. The Temporary Civil Servants (Appointment to Public Positions) Law, 1985 (Law 160/85) made provision for the organic emplacement in the civil service of temporary government personnel, by their appointment to corresponding positions in the establishment of the public service; provided they possessed the qualifications envisaged by the schemes of service for appointment. The material date for qualification for appointment (service in the capacity of temporary personnel) was the 31st December, 1984. Notwithstanding the service of the applicant with government, first employed in 1975 as Care personnel, she did not qualify for appointment; for at the material time she served on an hourly basis and not as temporary personnel. Success at government examinations was a prerequisite for appointment to the temporary personnel establishment of the Service. This qualification she acquired after the enactment of the law, that is, on 3.1.85. A while later, on 1.9.85, she was appointed Clerical Assistant Second Grade. As it happened she suffered a diminution of earnings for her emoluments were fixed at the starting point of the salary scale applicable to the position to which she was appointed.

As can be gathered, she accepted the position offered her in September, 1985, without reservation of rights or challenge of any term of the conditions of her service by way of judicial review. She first complained about the terms and conditions of her service in April, 1986. First, about her ineligibility for permanent appointment under Law 160/85 and, shortly afterwards, about the diminution of her earnings, compared to her emoluments when she served on an hourly basis.

On 11.4.86 she addressed a letter to the Public Administra-

tion and Personnel Dept. of the Ministry of Finance, seeking retroactive appointment to the post of "temporary" clerical assistant and sequentially thereto acknowledgment of eligibility for appointment to an organic post under Law 160/85. Her request drew a negative response from the respondents. On 5 24.4.86 the Personnel Department informed her that her claim was untenable, pointing out that she was, in any event, ineligible for appointment as temporary Clerical Assistant before 3.1.85, when she passed the relevant government examinations. On 10 4.7.86 the applicant aired her second complaint respecting the diminution of her emoluments upon appointment to the post of temporary Clerical Assistant. Once more, her request was rejected on 19.8.86. A reply was given her explaining that according to the settled government policy evolved since 15 1979 (Circular No. 503 - 7.7.79), temporary personnel were invariably placed on appointment at the starting point of the salary scale applicable to their grade. The only exception made, affecting personnel of the Water Development Department (74 of them), had legislative sanction (Law 145/85).

20 Respecting her claim for retroactive appointment to a "temporary" post, the Personnel Department signified their adherence to the position adopted and explained in their letter of 23.4.86.

25 The present recourse was mounted against the decision or decisions set out in the letter of 19th August, 1986. The exposition of the facts made above makes it self-evident, to my comprehension that the recourse is non justiciable. The letter of 19th August, 1986, was, in so far as it concerned her request for retroactive appointment, confirmatory of the position communicated on 24.4.86. Hence, the recourse is out of time. 30

35 Furthermore, I am of opinion that the decision of 24.4.86 did not contain a justiciable act either. Unqualified acceptance of appointment to the position of temporary Clerk deprived the applicant of legitimate interest to challenge any aspect of her appointment or terms of service. On the other hand, the deci-

sion communicated on 24.4.86 to the extent it referred the application of Law 160/85 was plainly inforamatory of its effect. Likewise, applicant is barred from mounting a challenge to the terms of her appointment as temporary clerk. By her unqualified acceptance of the terms of her appointment she forfeited every interest to challenge it thereafter. Nor have her complaints of unequal treatment been substantiated. There is no evidence whatever to justify the complaints of discriminatory treatment by the Administration.

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In the light of the above, the recourse is dismissed. Let there be no order as to costs.

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*Recourse dismissed.
No order as to costs.*