

3 C.L.R.

1988 March 21

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

EFTERPI EFSTRATIOU PAPAKYRIAKOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMISSION,

Respondent.

(Case No. 57/87).

Educational Officers—Appointments on contract—The Educational Officers on Contract (Appointment to Posts in the Public Service) Law, 1985 (Law 161/85), section 3(1)—Papakyriakou v. The Republic (1988) 3 C.L.R. 593 adopted and followed.

5 The facts of this case sufficiently appear from the judgment of the Court.

*Sub judice decision annulled.
No order as to costs.*

Cases referred to:

10 *Savva v. The Republic* (1986) 3 C.L.R. 455;

Papakyriakou v. The Republic (1988) 3 C.L.R. 593.

Recourse.

Recourse against the decision of the respondent to appoint on

contract and/or renew contractual appointments of interested parties as teachers of Commercial subjects in preference and instead of the applicant.

A. S. Angelides, for the applicant.

P. Clerides, for the respondent.

5

Cur. adv. vult.

SAVVIDES J. read the following judgment. This recourse is directed against the act or decision of the Educational Service Commission (E.S.C.) dated 12th December, 1986, to appoint on contract and/or renew the contractual appointments of (1) Christos Vassiliou, (2) Constantinos Stylianou and (3) Lambros Djordjis, as teachers of Commercial subjects, instead of and in preference to her.

10

This case is similar with Case No 674/86, filed by the same applicant, the judgment in which has just been delivered. I will, therefore, relate the facts very briefly, since they appear in more detail in the above case.

15

The E.S.C. offered, on the 11th October, 1986, contractual appointments for 15 days to a number of Educationalists amongst whom interested party No. 2. As a result of the non acceptance of such appointments by certain candidates, the respondent appointed the applicant in the place of one of them, until further contacts were made with those of the candidates interested and having priority for appointment over her (see minutes of 13th October, 1986). Interested party No. 3 was also appointed on the same date. Upon the expiration of the aforesaid contractual appointments, the respondent met on the 31st October and renewed them for a further period of 15 days, except that of the applicant. In her place, interested party No. 1 was appointed, on the basis of the criteria set down by the E.S.C. on the 11th October, 1986. Recourse No. 674/86, was filed against the above decision.

20

25

30

Before the expiration of the aforesaid contractual appointments a letter was sent on the 6th December, to the Ministry of Education by the Ministry of Finance, granting approval for the employment of teachers on contract during the school year 1986/1987 (30 renewals and 17 new appointments, as stated in the said letter). This letter was communicated to the E.S.C. by letter dated the 10th December, 1986, to which lists were also attached containing the names of the educationalists concerned.

The E.S.C. met on the 12th December, 1986 and the relevant part of its minutes reads as follows: -

"The Commission having in mind

(a) the letter of the Ministry of Education No. 115/85/2 dated 10.12.1986 by which the approval for the contractual appointment of 47 teachers and 11 instructors is communicated,

(b) its decisions dated 9.9. , 10.9, 4.10, 11.10, 13.10 and 31.10.86 on the basis of which the following teachers and instructors were selected and appointed by the Commission on contract for a period of 15 working days, decides that the last fortnightly contracts be extended until the 31.7.87 or 31.8.87 as stated below:

Teachers

Stylianou Constantia Commercial Subjects till 31.7.87

Djordjis Lambros Commercial Subjects till 31.7.87

Vassiliou Christos Commercial Subjects till 31.7.87."

The applicant filed the present recourse challenging the above decision.

The grounds of law raised in this recourse are exactly the same with those raised in Recourse No. 674/86 and I will not repeat

them.

Counsel for the applicant argued, in addition, that the respondent did not consider the matter afresh, but simply decided to extend the duration of the contractual appointments of the interested parties. In view of this, counsel argued, if the original contractual appointments challenged by recourse No. 674/86 are annulled, the extension of the duration of those appointments, challenged by the present recourse, must also be annulled. Counsel further contended that the respondent did not exercise its own discretion in the matter but simply adopted the suggestion of the Ministry for the extension of the contracts of those educationalists listed by the Ministry of Finance.

It is clear from the wording of the sub judge decision that the E.S.C. did not consider the sub judge appointments de novo but it relied instead on its previous decisions which were based on the criteria laid down by it on the 11th October, 1986, in order to extend the duration of the same contractual appointments including those of the interested parties. I adopt what I have said in my judgment in *Efterpi Papakyriakou v. Republic* (1988) 3 C.L.R. 593 in which I annulled the decision challenged on the ground that the criteria laid down by the E.S.C. on the 11th October, being the same as those contained in regulation 5(2) and the Schedule to the 1972 Regulations which had been declared in the case of *Savva v. The Republic* (1986) 3 C.L.R. 455 as ultra vires the law and void for unreasonableness, could not have been relied upon and form the basis of the decision challenged.

As I said earlier, in reaching the sub judge decision the respondent did not consider the case de novo but simply extended the contractual appointments of those already appointed by its previous decisions on the criteria already mentioned. Consequently, the sub judge decision which does not offer any other reasoning is a continuation of the previous one and is based on the same criteria. As a result it has to be annulled for the same reasons.

In the result this recourse succeeds and the sub judice decision is hereby annulled with no order as to costs.

*Sub judice decision annulled.
No order as to costs.*