

1965
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Dec. 22

ELENI
IOANNIDOU
and
THE REPUBLIC
OF CYPRUS
THROUGH THE
PUBLIC SERVICE
COMMISSION, AN
INDEPENDENT
ORGAN OF THE
REPUBLIC

[TRIANTAFYLIDIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

ELENI IOANNIDOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE
PUBLIC SERVICE COMMISSION, AN
INDEPENDENT ORGAN OF THE REPUBLIC,

Respondent.

(Case No. 53/63).

Administrative Law—Constitution of Cyprus, Articles 3, 28 and 146—Public Service—Filling of posts—Recourse against validity of examination held in relation to the post of Administrative Secretary, Planning Commission—Examination only a preparatory step and not a final executory act—No recourse possible under Article 146—Articles 3 and 28 of the Constitution not contravened.

Administrative Law—Constitution of Cyprus, Articles 3 and 146—Public Service—Recourse against the scheme of service for the post of Administrative Secretary, Planning Commission—No recourse can be made directly against the scheme because it was published on 24th January, 1963 and present recourse was filed after the lapse of the period laid down by Article 146.3—Even if scheme could be challenged in this recourse, still there would be no finding that its provision, requiring knowledge of the English language to the high degree required by the nature of the post in question, is contrary to Article 3.

Applicant, who is a practising advocate, saw an advertisement in the Official Gazette of the 24th January, 1963, inviting applications for the filling of the post of Administrative Secretary. As a qualification in Law was prescribed by such scheme as one of the possible academic qualifications for first entrants into the public service, Applicant applied accordingly for appointment.

On the 6th March, 1963, the Respondent Commission decided to hold a written examination for candidates for the posts of Plan Control Officer and Administrative

Secretary and such examination was duly held on the 28th March, 1963.

The same examination paper was set for both posts. It comprised eight questions, out of which only five were to be attempted; it was made compulsory to answer two such questions in English and the remaining in the language of choice of each candidate, English, Greek or Turkish. Practically, all questions included in this paper related to the field of Economics but some of them, one or two, could be said to relate, also, to the field of Law.

Applicant, on seeing this paper protested and walked out without trying to answer any of the questions.

This recourse was filed on the 18th April, 1963; and an appointment to the post in question, on secondment from the service, was published in the official Gazette on the 4th July, 1963. Applicant did not file any further recourse in the matter.

Held, I. Whether or not the examination in question is a matter which can be the subject of a recourse under Article 146.

(a) The examination in question was a preparatory step, and not a final executory act, and therefore, this recourse cannot proceed against such examination, the Applicant having not challenged the eventual appointment to the post concerned; had she done so, then, in examining the validity of such appointment, any question arising in relation to the said examination and affecting the validity of the appointment could have been properly gone into.

(b) Assuming, however, that the examination held in this Case could, contrary to my above opinion, give rise to a recourse under Article 146, I would still not find that it was conducted in an invalid manner, as alleged by Applicant, and that, therefore, its outcome is invalid.

II. On whether or not there has been a breach of Article 28.

The various alternative academic qualifications prescribed in the scheme of service, were intended to ensure possession of a certain level of education on the part of first-entrants into the public service through appointment

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to the post concerned, and they cannot override the requirements arising out of the essential nature of such post, which is a post in the field of economic activity. The questions set had, therefore, to test the knowledge of the candidates in relation to the field in which the person to be appointed would be expected to operate. Holders of degrees, other than in Economics, were, of course, at a disadvantage, but such disadvantage was not the result of discrimination against them, but a disadvantage flowing from their not possessing sufficient knowledge relating to the nature of the post to which they wanted to be appointed. So, I cannot uphold the contention of counsel for Applicant that Article 28 was contravened.

III. On whether or not there has been a contravention of Article 3 of the Constitution.

I fail to see that Article 3 of the Constitution has been contravened in any way; it was never intended to exclude the testing of candidates in a foreign language, knowledge of which might be required as a qualification for appointment to a post.

IV. On Applicant's complaint that the same examination paper was set for both the posts of Administrative Officer and Plan Control Officer.

The examination paper was intended to test the knowledge of applicants in a specific field and apparently such knowledge was, in view of the nature of the work involved, considered by the Respondent Commission as essential for both posts. Such a course was reasonably open to the Commission in the light of all relevant considerations; in this respect it is useful to note that under the relevant scheme of service the Plan Control Officer acts *under the supervision* of the Administrative Secretary, in relation to the implementation of the Development Plan.

V. On applicant's challenge of the relevant scheme of service, in that the English language has been noted thereby higher as a qualification than the Greek or Turkish languages, contrary to Article 3 of the Constitution.

(a) No recourse under Article 146 can be made directly against such scheme because it was published on the 24th January, 1963—when the post was advertised—

and this recourse was not filed until the 18th April, 1963, i.e. after the lapse of the period laid down by Article 146(3). Such scheme could also have been challenged through a recourse against the eventual appointment, but this course has not been followed by Applicant.

(b) Even if, however, the said scheme could be challenged by means of this recourse, I would still not find in favour of Applicant for the simple reason that, so long as knowledge of the Greek or Turkish language to a sufficient degree was made a requirement by the relevant scheme of service, there was nothing contrary to Article 3 in requiring knowledge of the English language to the high degree required by the nature of the post in question..

The order: This recourse fails and is dismissed, but I have not thought fit to make any order as to costs.

Application dismissed.

Cases referred to:

Kolocassides and The Republic, (reported at this Part at p. 549 *ante*);

Decision 1194/1957 of the Greek Council of State.

Recourse.

Recourse against the act of the Respondent to set for the examinations for selecting the person to be appointed as Administrative Secretary of the Planning Commission 7 questions, out of 8, on Economic Subjects.

A. *Pantelides* for the applicant.

K.C. *Talarides*, *Counsel of the Republic*, for the Respondent.

Cur. adv. vult.

The following judgment was delivered by:—

TRIANTAFYLLIDES, J.: In this Case the Applicant challenges the validity of an examination held on the 28th March, 1963, in relation to the post of Administrative Secretary, of the Planning Commission. She, further, challenges the scheme of service for such post, (vide *exhibit B*).

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Originally, as filed, this recourse related both to the aforesaid post and to the post of Plan Control Officer but during Presentation Applicant's counsel stated that he desired to omit any reference to the post of Plan Control Officer, for which Applicant had never applied, and accordingly any reference to such post was struck out by consent.

The main facts of this Case are as follows:—

Applicant, who is a practising advocate, saw an advertisement in the Official Gazette of the 24th January, 1963, inviting applications for the filling of the aforesaid post of Administrative Secretary. Such advertisement was on the lines of the relevant scheme of service, (vide *exhibit B*). As a qualification in Law was prescribed by such scheme as one of the possible academic qualifications for first entrants into the public service, Applicant applied accordingly for appointment.

On the 6th March, 1963, the Respondent Commission decided (vide *exhibit 1*) to hold a written examination for candidates for the posts of Plan Control Officer and Administrative Secretary and such examination was duly held on the 28th March, 1963.

The same examination paper was set for both posts (vide *exhibit A*). It comprised eight questions, out of which only five were to be attempted; it was made compulsory to answer two such questions in English and the remaining in the language of choice of each candidate, English, Greek or Turkish. Practically, all questions included in this paper related to the field of Economics but some of them, one or two, could be said to relate, also, to the field of Law.

Applicant, on seeing this paper, protested and walked out without trying to answer any of the questions.

This recourse was filed on the 18th April, 1963; and an appointment to the post in question, on secondment from the service, was published in the official Gazette on the 4th July, 1963. Applicant did not file any further recourse in the matter.

The first matter to be determined in this recourse is whether or not the examination in question is a matter which can be the subject of a recourse under Article 146; in other words, whether it is a matter amounting to a final executory act or

whether such examination is only a preparatory step towards the final decision of the filling of the post concerned. If it is only a preparatory step then no recourse is possible under Article 146. The position under Article 146 is in this respect the same as that existing in Greece under the relevant provisions there (vide Conclusions from the Jurisprudence of the Council of State in Greece 1929-1959 pp. 231, 237, 239; *Kolocassides and The Republic*, (reported in this Part at p. 549 ante) affirmed in Revisional Appeal 4, (reported in this Part at p. 542 ante)).

I have reached the conclusion that, in the circumstances of this Case, the examination in question was a preparatory step, and not a final executory act, and therefore, this recourse cannot proceed against such examination, the Applicant having not challenged the eventual appointment to the post concerned; had she done so, then, in examining the validity of such appointment, any question arising in relation to the said examination and affecting the validity of the appointment could have been properly gone into.

Counsel for Applicant, in support of the opposite view, has referred me to the position in Greece, where it is true that results of examinations, held for the purposes of the public service, may be challenged on their own by means of recourse for annulment—a remedy analogous to the recourse under our own Article 146. But in Greece the results of examinations are, as such, executory acts, because such results create a right of a successful candidate to be duly appointed—and also corresponding obligations of the appointing authorities; they are not only a step towards choosing eventually the most suitable candidate, as is the case with the examination held by the Public Service Commission for the post in question. The position is regulated in Greece by special legislation, which we do not have in force in Cyprus. It is useful, in this connection to refer to Kyriakopoulos on Greek Administrative Law, 4th edition, volume III, p. 194 and to Kyriakopoulos on the Law Relating to Civil Servants (1954), pp. 77-81. So, no useful guidance can be derived from what is obtaining in Greece in relation to results of examinations for the public service.

Also, Decision 1194/1957 of the Greek Council of State, which has been referred to by counsel for Applicant, is distinguishable from the present Case, because there the exa-

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minations held related to admission into a certain calling and, therefore, their results were clearly of a final executory nature.

Assuming, however, that the examination held in this Case could, contrary to my above opinion, give rise to a recourse under Article 146, I would still not find that it was conducted in an invalid manner, as alleged by Applicant, and that, therefore, its outcome is invalid:

Counsel for Applicant has, first, complained that there has been a breach of Article 28, in that not a proper balance has been reflected in the questions set by the examination paper between the various academic qualifications required to be possessed by first-entrants and that, therefore, as practically all the questions set related to Economics, holders of Economics degrees were favoured and holders of other degrees, such as Law, were discriminated against.

In my view, the various alternative academic qualifications prescribed in *exhibit B*, the scheme of service, were intended to ensure possession of a certain level of education on the part of first-entrants into the public service through appointment to the post concerned, and they cannot override the requirements arising out of the essential nature of such post, which is a post in the field of economic activity. The questions set had, therefore, to test the knowledge of the candidates in relation to the field in which the person to be appointed would be expected to operate. Holders of degrees, other than in Economics, were, of course, at a disadvantage, but such disadvantage was not the result of discrimination against them, but a disadvantage flowing from their not possessing sufficient knowledge relating to the nature of the post to which they wanted to be appointed. So, I cannot uphold the contention of counsel for Applicant that Article 28 was contravened.

Counsel for Applicant submitted next that all the questions were put in English and that two questions had to be answered in English and that if a candidate so wished he could have replied to all other questions in English too. He submitted that, in this respect, Article 3 of the Constitution had been infringed and that, further, there was no way of testing the knowledge of a candidate in Greek or Turkish, as the case might be, if such candidate would have chosen to answer all questions in English.

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In my opinion, as the scheme of service for the post in question required “an excellent knowledge of English” there was nothing improper in setting the examination paper in English and in making the answering of two questions in English compulsory. As explained by counsel for Respondent—and it is not disputed—the holder of the post concerned would have to deal a lot with foreign experts, in the English language. The examination was treated as a means of testing the suitability of candidates in certain particular respects viz. from the point of view of sufficient academic knowledge for the requirements of the post and also from the point of view of knowledge of the English language, in relation again to the requirements of the post. Of course, the Commission would have had to ascertain otherwise that the “very good knowledge” of Greek or Turkish, required under the scheme of service, was possessed by a candidate to be appointed, in the same way such knowledge, which is a *sine qua non* for appointment in the public service in Cyprus, is ascertained in all cases where no examinations are being held. I fail to see that Article 3 of the Constitution has been contravened in any way; it was never intended to exclude the testing of candidates in a foreign language, knowledge of which might be required as a qualification for appointment to a post.

Lastly, counsel for Applicant has complained that the same examination paper was set for both the posts of Administrative Officer and Plan Control Officer, though the duties and responsibilities of such posts are different. As indicated already, in my opinion the examination paper was intended to test the knowledge of applicants in a specific field and apparently such knowledge was, in view of the nature of the work involved, considered by the Respondent Commission as essential for both posts. Such a course was reasonably open to the Commission in the light of all relevant considerations; in this respect it is useful to note that under the relevant scheme of service (*vide exhibit B*) the Plan Control Officer acts *under the supervision* of the Administrative Secretary, in relation to the implementation of the Development Plan.

Applicant has challenged, also, in this Case, the relevant scheme of service, as such, and she has complained, in this connection, that the English language has been rated thereby higher as a qualification than the Greek or Turkish languages and that this was contrary to Article 3; a ‘very good’ know-

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ledge of Greek or Turkish is required, whereas the knowledge of English has to be 'excellent'.

In my opinion, no recourse under Article 146 can be made directly against such scheme because it was published on the 24th January, 1963—when the post was advertised—and this recourse was not filed until the 18th April, 1963, i.e. after the lapse of the period laid down by Article 146(3). Such scheme could also have been challenged through a recourse against the eventual appointment, but this course has not been followed by Applicant.

Even if, however, the said scheme could be challenged by means of this recourse, I would still not find in favour of Applicant for the simple reason that, so long as knowledge of the Greek or Turkish language to a sufficient degree was made a requirement by the relevant scheme of service, there was nothing contrary to Article 3 in requiring knowledge of the English language to the high degree required by the nature of the post in question.

For all these reasons, this recourse fails and is dismissed, but I have not thought fit to make any order as to costs.

Application dismissed.
No order as to costs.