

[TRIANTAFYLIDIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

PANTELIS PAPAPANTELIS AND OTHERS,

*Applicants,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Cases Nos. 45/65, 77/65, 95/65).

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*Public Officers—Promotions—Recourse against decision of respondent to promote the Interested Parties to the post of Assistant Labour Officer, Ministry of Labour and Social Insurance, in preference and instead of applicants—Decision annulled as it was taken by the Commission meeting without a proper quorum.*

*Public Service Commission—Constitution, functioning and quorum—Decision of Commission to promote Interested Parties to the post of Assistant Labour Officer, Ministry of Labour and Social Insurance—Provisions of the Public Service Commission (Temporary Provisions) Law, 1965 (Law 72 of 1965), and particularly section 5 thereof cannot save the validity of the said decision.*

*Constitutional Law—Constitution of Cyprus—Doctrine of necessity—Decision of respondent Commission to promote Interested Parties to the post of Assistant Labour Officers, Ministry of Labour and Social Insurance—Prerequisites did not exist for the coming into play of the "law of necessity" in relation to the said decision.*

*Necessity—Law or Doctrine of necessity—See above.*

The applicants in the instant recourses seek the annulment of the decision of the respondent taken on the 12th February, 1965 to promote the five Interested Parties to the post of Labour Officer.

A common issue to all three recourses has been raised namely that when the said decision of the respondent Commission was taken, such Commission was not properly constituted for the purpose.

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It is common ground that at the time there existed vacant two seats for Greek members of the Commission, and no Turkish members had been participating at meetings of the Commission since December 1963. Thus, the maximum number of members of the Commission available for its meetings at the material time was five only, and it is common ground that five members were present at the meeting of the 12th February, 1965.

A second common issue raised was that the *sub judice* decision of the Commission could be found to be valid, by virtue of the Law of necessity.

*Held, on the 1st Issue :*

For the reasons given, and the jurisprudence referred to, to-day in the Judgment in Case 146/64, *Hadji Georghiou and The Republic, infra*, (and which Judgment should be read accordingly as part of this Judgment) I am of the opinion:—

(i) that when the Commission met on the 12th February, 1965, it was improperly constituted due to lack of quorum and could not validly take its *sub judice* decision ; and

(ii) that the provisions of the Public Service Commission (Temporary Provisions) Law, 1965 (Law 72/65), and particularly section 5 thereof, cannot save the validity of the said decision of the Commission, as in these recourses judgment had already been reserved when Law 72/65 was enacted.

*Held on the 2nd issue :*

(1) I have reached the conclusion, in the light of what has been stated in this respect in the aforesaid judgment in Case 146/64, that the existence of the prerequisites for the coming into play of the “ law of necessity ” ought to have been established by reference to the specific circumstances in which the relevant executive action was taken ; and on the material before me I am not satisfied that such prerequisites did exist in relation to the decision to promote the Interested Parties.

(2) I do fail to see how the “ law of necessity ” could have warranted the making of permanent promotions to the existing, at the time, vacancies in the post of Assistant Labour

Officer ; any urgent needs of the service could have been met by temporary acting appointments and that is all that, in my view, could have been justified in the circumstances under the "law of necessity", provided all the other prerequisites for its operation had also been satisfied, too.

(3) In the result, the decision to promote the Interested Parties to the post of Assistant Labour Officer is declared to be *null and void* and of no effect whatsoever.

*Sub judice decision annulled.*

*No order as to costs.*

Cases referred to :

*Hadji Georghiou and the Republic*, (reported in this vol. at p. 504), applied.

### Recourse.

Recourse against the decision of the Respondent concerning promotions to the post of Assistant Labour Officer.

*K. Saveriades*, for the Applicant in Case No. 45/65.

*L. Papaphilippou*, for the Applicant in Case No. 77/65.

*L. Clerides* and *A. Argyrides*, for the Applicant in Case No. 95/65.

*A. Frangos* and *L. Loucaides*, Counsel of the Republic, for the Respondent.

*Cur. adv. vult.*

The following Judgment was delivered by:-

TRIANTAFYLLIDES, J.: The Applicants in these recourses seek the annulment of the decision of the Respondent Commission to promote to the post of Assistant Labour Officer the five Interested Parties (G. Ioannou, Chr. Mesaritis, K. Demetriades, S. Economou and Chr. Georghiades) in preference to, and instead of, Applicants (Interested Party Chr. Georghiades is erroneously described in the motion for relief as "Charalambos Georghiades" but there has been no dispute about his identity as one of the Interested Parties).

With the consent of all parties these three Cases have been heard together and it is proposed to give one Judgment in all three of them.

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The relevant decision of the Public Service Commission is dated the 12th February, 1965 (*exhibit 3*); by virtue of such decision the Commission decided to promote to the post of Assistant Labour Officer, with effect from 1st March, 1965, the aforesaid Interested Parties. The three Applicants were among the candidates who were considered for promotion to the said post, but they were not eventually selected for such promotion.

An issue which has been raised, in common to all these three recourses, is that when the said decision of the Respondent Commission was taken, such Commission was not properly constituted for the purpose.

It is common ground that at the time there existed vacant two seats for Greek members of the commission, and no Turkish members had been participating at meetings of the Commission since December 1963. Thus, the maximum number of members of the Commission available for its meetings at the material time was five only, and it is common ground that five members were present at the meeting of the 12th February, 1965.

For the reasons given, and the jurisprudence referred to, to-day in the Judgment in Case 146/64, *HadjiGeorghiou and The Republic\**, (and which Judgment should be read accordingly as part of this Judgment) I am of the opinion:—

(i) that when the Commission met on the 12th February, 1965, it was improperly constituted due to lack of quorum, and could not validly take its sub judice decision; and

(ii) that the provisions of the Public Service Commission (Temporary Provisions) Law, 1965 (Law 72/65), and particularly section 5 thereof, cannot save the validity of the said decision of the Commission, as in these recourses judgment had already been reserved when Law 72/65 was enacted.

Regarding the issue, raised in these proceedings, that the sub judice decision of the Commission could be found to be valid, nevertheless, by virtue of the “law of necessity”, I have reached the conclusion, in the light of what has been stated in this respect in the aforesaid Judgment in Case 146/64, that the existence of the prerequisites for the coming into play of the “law of necessity” ought to have been established

\*Reported in this part at p. 504 *ante*.

by reference to the specific circumstances in which the relevant executive action was taken; and on the material before me I am not satisfied that such prerequisites did exist in relation to the decision to promote the Interested Parties.

I do fail to see how the "law of necessity" could have warranted the making of permanent promotions to the existing, at the time, vacancies in the post of Assistant Labour Officer; any urgent needs of the service could have been met by temporary acting appointments and that is all that, in my view, could have been justified in the circumstances under the "law of necessity", provided all the other prerequisites for its operation had also been satisfied, too.

In the result, the decision to promote the Interested Parties to the post of Assistant Labour Officer is declared to be null and void and of no effect whatsoever.

As the Respondent Commission will have to deal afresh with the filling of the vacancies in question I do not think, in the circumstances of these Cases, that I should express any view on the issue of the comparative merits of the Applicants and the Interested Parties.

Regarding costs I have decided, in view also of the ground on which these recourses have succeeded, not to make an order as to costs.

*Sub judice decision annulled.*

*No order as to costs.*

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