

[STAVRINIDES, J.]

1968  
April 29

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

DEMETRA COSTA  
PAPANTONIOU &  
OTHERS  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

DEMETRA COSTA PAPANTONIOU & OTHERS,

*Applicants,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Cases No. 152/66, 153/66, 154/66).

(Consolidated).

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*Public Officers—Appointments or Promotions—Scheme of Service—Vacancy in first entry and promotion post—In the present case vacancies in the permanent and pensionable post of Assistant Welfare Officer in the Department of Welfare Services—Advertisement in the Official Gazette inviting applications for such post—Candidatures—Selection—The Public Service Commission ought to select the most suitable from among the candidates possessing the qualifications required by the scheme of service—Instead, the Commission made the selection exclusively from among those candidates who actually were holding the temporary corresponding post—On the ground that in so acting they followed their practice to make appointments to permanent posts from among holders of corresponding temporary posts—But this ground is bad in law, because the practice of the Public Service Commission cannot override a rule of law i.e. in the instant case the relevant scheme of service—Submission that in effect the appointments complained of were merely an alteration of the appointees status from temporary to permanent, is bad in law—Therefore, the Applicants had a legitimate interest in the annulment of the subject appointments—Article 146.2 of the Constitution. See, also, herebelow.*

*Public Service Commission—Vacancies—Appointments or Promotions—Duty to select the most suitable candidate—All candidates qualified by the relevant scheme of service entitled to be fairly and impartially considered with a view to appointment of those thus found most suitable—“Practice of the*

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*Public Service Commission*—Cannot override a rule of law—  
*See, also, above.*

*Scheme of Service*—Cannot be overridden by “a practice of the  
*Public Service Commission*”—*See above.*

*Appointments and Promotions in the public service*—*See above.*

*Promotions and Appointments in the public service*—*See above.*

*Recourse under Article 146 of the Constitution*—*Legitimate in-*  
*terest—Article 146.2—See above under Public Officers.*

*Legitimate interest under Article 146.2 of the Constitution*—*See*  
*above under Public Officers.*

By these recourses the Applicants seek to annul two ap-  
pointments to the permanent and pensionable post of As-  
sistant Welfare Officer in the Department of Welfare  
Services.

On November 23, 1965, the Public Service Commission  
published a notice in the Official Gazette of the Republic  
inviting applications for vacancies in the said post of As-  
sistant Welfare Officer. In response to that notice all  
three Applicants applied for appointment and all were in-  
terviewed by the Commission on December 1, 1965.  
The Commission made its selection exclusively from among  
officers actually holding the temporary post of Assistant  
Welfare Officer without considering other candidates (in-  
cluding the three Applicants), although the holding of such  
temporary post was not included in the qualifications re-  
quired under the relevant scheme of service for the ap-  
pointment or promotion to the permanent post of Welfare  
Officer.

In annulling the appointments complained of, the  
Court:-

*Held, (1).* In the circumstances of these cases every  
one who was qualified by the scheme of service was en-  
titled to apply for appointment to the permanent post and  
to be fairly and impartially considered without any discri-  
mination. The alleged practice of the Commission to  
make appointments to permanent posts from among hold-  
ers of corresponding temporary posts cannot override a  
rule of law. Accordingly the subject appointments can-  
not be saved by any such plea as “the practice of the Com-

mission". Hence they must be annulled unless none of the Applicants has an existing legitimate interest in such annulment.

(2) Counsel for the Respondent submitted that none of the Applicants had such interest. With regard to applicant P. he said that was "because she could not possibly have been appointed to the permanent post in the first place". But he gave no reason why she could not. In the case of the two other Applicants he based his submission solely on the ground that "the decision (complained of) was merely an alteration of the status of the Interested Parties from temporary to permanent". That this ground is bad is clear; for whatever the subject appointments meant to the appointees, to the Applicants they meant denial of the permanent and pensionable appointment they were seeking. It follows that these two Applicants at any rate, if not the other Applicant as well, had a legitimate interest in the annulment of the appointments.

(3) For the foregoing reasons the subject appointments are hereby annulled; and the Commission must reconsider the filling of the vacancies so created without any predilection based on "practice" and on the footing that all candidates qualified by the scheme of service are entitled to be fairly and impartially considered with a view to the appointment of those found most suitable.

*Subject appointments annulled,  
with the costs in favour of  
Applicants.*

Cases referred to:

*Grimaldi and The Republic*, (1965) 3 C.L.R. 443.

### **Recourse.**

Recourse against the validity of the decision of the Respondent Public Service Commission to appoint the Interested Parties A. Sofroniou and A. Olympios to the post of Assistant Welfare Officer in the Department of Welfare Services, in preference and instead of the Applicants.

*L. Clerides*, for the Applicants.

*M. Spanos*, Counsel of the Republic, for the Respondent.

*Cur. adv. vult.*

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The following Judgment was delivered by:-

STAVRINIDES, J.: By these applications, which have been consolidated by consent, the Applicants seek to annul two appointments to the permanent and pensionable post of Assistant Welfare Officer in the Department of Welfare Services. The appointees—Mr. A. Sofroniou and Mr. A. Olympios—attended throughout the hearing but took no active part in it, being content to leave the defence of their interests to Counsel of the Republic who appeared for the Respondent.

The events which led to these proceedings are briefly as follows: The Applicant Papantoniou entered the public service in August, 1962, when she was appointed Assistant Welfare Officer on daily wages. On May 21, 1963, she was appointed to the permanent and pensionable post of Assistant Welfare Officer on probation for a period of two years, and on the expiry of that period her appointment was confirmed. Both the other Applicants were appointed to that post on May 11, 1963; and these appointments also were on probation for, and confirmed on, the expiry of a period of two years. On September 9, 1965, upon application by one Mrs. Chloe Grimaldi, the appointments of all three present Applicants and one other person were annulled on grounds which have nothing to do with their fitness to hold the post in question (*Grimaldi v. Republic*, (1965) 3 C.L.R. 443). On November 23, 1965, the Public Service Commission (hereafter “the Commission”) published a notice in the official Gazette of the Republic inviting applications for vacancies “in the post of Assistant Welfare Officer” without specifying whether the vacancies or any of them related to the permanent and pensionable post (hereafter simply “the permanent post”). In response to that notice all three present Applicants applied for appointment and all were interviewed by the Commission on December 1, 1965. Although this is not stated in so many words in the applications to the Court, it is clearly implied by each of them, and not disputed by the Respondent, that the respective applications to the Commission were for appointment to the permanent post. Now appended to the opposition to each of the former applications is a document headed “Extract from the minutes of the meeting of the Public Service Commission held in Nicosia on April 28, 1966, at 9.30 a.m.”, which so far as relevant reads:

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“In filling the vacancies in the post of Assistant Welfare Officer, and after considering the qualifications, experience and merits of Assistant Welfare Officers holding the temporary post, the Commission decided unanimously that Messrs. A. S. Olympios and A. Sofroniou be appointed substantively to the permanent post of Assistant Welfare Officer with effect from May 1, 1966.

The Commission further decided unanimously that the remaining two vacancies in the permanent post be filled at a later date when the newly appointed officers will have been tested and reported on.

The Commission after considering the qualifications, experience and merits of the candidates interviewed for the post of Assistant Welfare Officer on December 1, 1965, and having regard to the reports submitted by Mr. Vakis (the Director of Welfare Services) on the Applicants, decided unanimously that the following be appointed to the temporary post of Assistant Welfare Officer:

1. Chloe Grimaldi
2. Demetra Papantoniou
3. Myrianthi Papaonesiphorou
4. Lefki Petridou”.

It will be noted that the minute, while stating, with regard to the appointments complained of, that they were made after consideration of “the qualifications, experience and merits of *Assistant Welfare Officers holding the temporary post*”, says nothing about consideration of the qualifications, experience and merits of the Applicants or any one of them; and indeed in two of the oppositions viz. those in former applications Nos. 152 & 154, it is expressly stated (para. 3 of each opposition) that

“the Applicant was not at the time holding the temporary post of Welfare Officer and she was not considered for appointment to the permanent post”.

As the Applicant in case No. 153/66 also was not holding that temporary post at the time, it is clear that she was not considered either.

The question then arises whether the Commission was entitled to make its selection in respect of two of the four vacancies in the permanent post of Assistant Welfare Officer

exclusively from among officers actually holding the temporary post of Assistant Welfare Officer. In the *Grimaldi* case Triantafyllides, J., said at p. 457 of the report:

“It is up to the Commission now to advertise the vacancies thus arising, on the basis of the scheme of service in force, and to consider properly the filling thereof in the light of this judgment, paying also due regard to the duty to apply properly the circular letter *exhibit I*”.

Thus the Commission was bound to advertise the vacancies in question; and in fact, silent as the advertisement referred to was as to the nature of the posts to which it related, it is stated, in effect, in each opposition that it was inserted in pursuance of that judgment, which means that it related to the vacancies created by it. It follows that every one who was qualified by the scheme of service applicable to the post was entitled to apply for appointment to the permanent post and to be fairly and impartially considered without any discrimination as between any who were currently, in whatever capacity, in the public service, any who, having been previously in the public service, were currently, through no fault of their own, outside it and any who had never been in it. But on its own showing the Commission made its choice, in each case, exclusively from among “Assistant Welfare Officers holding the temporary post”.

Counsel for the Republic said in his address that it was

“the practice of the Commission to make appointments to permanent posts from among holders of corresponding temporary posts if any suitable candidates could be found in this way”.

However, it is self-evident that the practice of the Commission cannot override a rule of law. Accordingly the subject appointments cannot be saved by any such plea as “the practice of the Commission”. Hence they must be annulled unless none of the Applicants has an existing legitimate interest in such annulment.

Counsel for the Respondent submitted that none of the Applicants had such interest. With regard to the Applicant Protopapa (Constantinides) he said that was “because she could not possibly have been appointed to the permanent post in the first place”. But he gave no reason why she

could not. In the case of the other two Applicants he based that submission solely on the ground that "the decision (complained of) was merely an alteration of the status of the interested parties from temporary to permanent". That this ground is bad is clear; for whatever the subject appointments meant to the appointees, to the Applicants they meant denial of the permanent and pensionable appointments that they were seeking. It follows that these two Applicants at any rate, if not the other Applicant as well, had a legitimate interest in the annulment of the appointments.

For the reasons given the subject appointments must be, and hereby are, annulled; and the Commission must reconsider the filling of the vacancies so created without any predilection based on "practice" and on the footing that all candidates qualified by the scheme of service are entitled to be fairly and impartially considered with a view to the appointment of those found most suitable. The Applicants must have their costs, which I fix at £15.-

*Subject appointments annulled.  
Order for costs as aforesaid.*

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