

1968
June 19

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REPUBLIC
(PUBLIC SERVICE
COMMISSION)
v.
KIKI GAVA

[VASSILIADES, P., TRIANTAFYLIDIS, JOSEPHIDES,
HADJIANASTASSIOU, JJ.]

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Appellant,

v.

KIKI GAVA,

Respondent.

(*Revisional Jurisdiction Appeal No. 37*).

Public Officers—Public Service and Service in the former Greek Communal Chamber which was abolished on March 31, 1965 by the Transfer of the Exercise of the Competences of the Greek Communal Chamber and the Ministry of Education Law, 1965 (Law No. 12 of 1965)—Persons in the service of the said Chamber—Emplacement to analogous posts in the public service—Section 16(1)—See, also, herebelow.

Greek Communal Chamber—Abolition on March 31, 1965—Persons in the service of the said Communal Chamber—Emplacement to analogous posts in the public service—Section 16(1) of the said Law No. 12 of 1965—See above and below.

Administrative and Constitutional Law—Recourse under Article 146 of the Constitution—Omission—Article 146.1.—A finding of an omission on the part of the Public Service Commission was not open to the trial Court—Since the Commission had taken a decision in the matter in the exercise of its discretionary powers under section 16(1) of the said Law No. 12 of 1965, supra—Nor was it open to the trial Court to decide, instead of the Commission, what was the post in the public service to which the Applicant (Respondent herein) ought to have been emplaced.

Omission—Article 146.1 of the Constitution—See above.

Recourse under Article 146 of the Constitution—Powers of the Court in annulling an administrative decision (as omission)—Omission—See under Administrative and Constitutional Law above.

This is an appeal taken by the Republic through the

Public Service Commission (Respondent in the recourse) against the Judgment of a Single Judge of this Court (reported in this Part at p. 71 *ante*) given in favour of the then Applicant (now Respondent) on her recourse whereby she was complaining regarding her emplacement to a post in the public service under section 16(1) of the Transfer of the Exercise of the Competences of the Greek Communal Chamber and the Ministry of Education Law, 1965 (Law No. 12 of 1965).

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Held, (1)(a). We declare *null* and *void* the decision of the Public Service Commission of the 26th January 1966, which has given rise to the present proceedings. Such decision was reached without the Commission having before it all the material considerations which make up the complete picture of the duties which the Respondent herein was carrying out in the service of the abolished on March 31, 1965 Greek Communal Chamber.

(b) It is now up to the Commission to reconsider the matter of the emplacement of the Respondent, in the exercise of their relevant powers under section 16(1) of the Law No. 12 of 1965 (*supra*), and in the light of all relevant considerations, including the material placed before the trial Court at the hearing of the recourse.

(2)(a) In the result the Order of the trial Court appealed against (see p. 71 of this Part *ante*) is set aside and the Order of annulment which we have just made is substituted in its place.

(b) Once the Public Service Commission had taken a decision in the matter, in the exercise of its discretionary powers under the said section 16(1) it was not open to the trial Court to find that there existed on the part of the Commission an omission; nor was it open to such Court to decide instead of the Commission, what was the post in the public service to which the Applicant (Respondent herein) ought to have been emplaced, and to make a declaration accordingly.

*Appeal allowed. No order
as to costs of the appeal.
Order in terms.*

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Appeal.

Appeal by the Public Service Commission (Respondent in the recourse) from the Judgment of a Judge of the Supreme Court of Cyprus (Stavrinides J.) given on the 5th February, 1968 (Case No. 57/66) whereby, on a recourse filed by Applicant, Respondent's decision to emplace Applicant to the post of Stenographer 1st Grade instead of that of Administrative Assistant 3rd Grade was annulled and it was moreover declared that Applicant was entitled to be placed by the Commission in the post of Administrative Assistant, 3rd Grade and that the Commission's omission to place her in that post ought not to have been made, and that the Commission must so place her.

K. Talarides, Senior Counsel of the Republic, for the Appellant.

A. Triantafyllides with *S. Spyridakis*, for the Respondent.

VASSILIADES, P.: The Judgment of the Court will be given by Mr. Justice Triantafyllides.

TRIANTAFYLLIDES, J.: At this stage, and having regard to the material before the Court, as well as to the submissions of counsel for the parties, we find that the appropriate course to be taken in this appeal is to declare *null and void* and of no effect whatsoever the decision of the Public Service Commission, of the 26th January, 1966, which has given rise to the present proceedings. We take the view that such decision was reached without the Commission having before it all the material considerations which make up the complete picture of the duties which the Respondent was carrying out in the service of the Greek Communal Chamber. It is now up to the Commission to reconsider the matter of the emplacement of the Respondent, in the exercise of its relevant powers under section 16(1) of the "Transfer of the Exercise of the Competences of the Greek Communal Chamber and The Ministry of Education Law", 1965 (Law 12/65), and in the light of all relevant considerations, including the material which was placed before the trial Court at the hearing of the recourse.

In the result the Order of the trial Court appealed against*

*Reported in this Vol. at p. 71 *ante*.

is set aside and the Order of annulment which we have just made is substituted in its place.

Once the Public Service Commission had taken a decision in the matter, in the exercise of its discretionary powers, under the said section 16(1), it was not open to the trial Court to find that there existed on the part of the Commission an omission; nor was it open to such Court to decide, instead of the Commission, what was the post in the public service to which the Applicant ought to have been emplaced, and to make a declaration accordingly.

There shall be no order as to the costs of the appeal.

Appeal allowed. No order as to costs of the appeal.

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