

1976
July 10

[A. LOIZOU, J.]

PANTELIS
KYPRIANOU
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PANTELIS KYPRIANOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 96/75).

Administrative Law—Collective organ—Defective composition—Principles governing validity of decisions taken by a collective organ with a defective composition—Exclusion of member of collective organ from a meeting on erroneous view that he could not participate—Collective organ cannot be considered as properly composed even if there is a quorum—Decision taken at such meeting annulled on the ground of wrong composition of the collective organ.

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Collective Organ—Composition of—Principles governing validity of decision taken by a collective organ with a defective composition.

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Public Service Commission—Composition of—Exclusion of members from a meeting on erroneous view that they could not participate—Annulment of the decision taken by the Commission on the ground of defective composition.

Following the annulment by the Supreme Court, of the promotion of the interested party to the post of Accounting Officer 1st Grade, the Public Service Commission met on the 14th June to consider the filling of the vacancy which had been created by means of the annulment. Two members of the Commission were excluded from the meeting on the erroneous view that they could not participate at such meeting; and the *sub judice* decision, promoting the interested party to the said post was taken by the chairman and two other members of the Commission.

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In a recourse challenging the validity of the said promotion:

Held, that in order to consider a collective organ as duly composed, it is not sufficient if the members necessary to constitute

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a quorum are present; that it must be clearly shown that the administration made possible the presence of all members of the organ by inviting them in time to be present at such a meeting; that if a member or members are excluded on an erroneous view that they could not participate at such a meeting the collective organ in question cannot be considered as properly composed when an administrative decision is taken even if there is quorum; that, such decision should be annulled on the ground of wrong composition of the organ; and that, in this case, in view of the fact that it was so conceded regarding the reasons for the absence of two members of the commission, the *sub judice* decision will be annulled on the ground that the respondent commission at the time it took same was not properly constituted (see *Pissas v. The Republic* (reported in this Part at p. 30 *ante*)).

Sub judice decision annulled.

Cases referred to:

Panayiotou & Others v. The Republic (1972) 3 C.L.R. 337;
Kyprianou & Others (No. 2) v. The Republic (1975) 3 C.L.R. 187;
Pissas v. The Republic (reported in this Part at p. 30 *ante*).

20 Recourse.

Recourse against the decision of the respondent to promote the interested party to the post of Accounting Officer, 1st Grade, in the Treasury Department, in preference and instead of the applicant.

25 *K. Talarides*, for the applicant.

R. Gavrielides, Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:—

30 A. LOIZOU, J.: The filling of a vacancy in the post of Accounting Officer 1st Grade in the Treasury Department, was first decided upon by the respondent Commission on the 27th July, 1971, by the promotion to it of Joseph Mousa, the interested party in the present recourse. Its legality was challenged
35 by the present applicant and other officers having legitimate interest in the matter, by Recourses Nos. 304/71 and 336/71, filed to this Court under Article 146 of the Constitution. That decision was annulled (see *Panayiotou and Others v. The Republic* (P.S.C.) (1972) 3 C.L.R. 337), on the ground that the deliberations of the respondent Commission extended to two meetings
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and that when the decision was taken at the second meeting the matter was not examined ab initio, although there had been a change in its composition through the presence of a member who did not take part at the previous meeting.

After the annulment of that decision, the respondent Commission considered again the filling of the said vacancy and promoted the interested party to the *sub judice* post, retrospectively, as from the 1st August, 1971. 5

The validity of that decision was challenged again by the present applicant and other officers eligible for promotion to that post by Recourses Nos. 362/72 and 366/72, and this Court annulled again the *sub judice* decision by its judgment of the 23rd May, 1975 (see *Kyprianou and Others (No. 2) v. The Republic (R.S.C.) (1975) 3 C.L.R. 187*), on the ground that that decision was not duly reasoned because of lack of clarity. 10 15

The Public Service Commission at its meeting of the 14th June, 1975 and in the presence of the Accountant-General, considered the filling of the said vacancy in the permanent post of Accounting Officer, 1st Grade, in the Treasury which was created by the annulment of the promotion of Mr. J. Mousa by the Supreme Court in the aforesaid two recourses. As it appears from the relevant minute of the respondent Commission (*exhibit 1, enclosure 1*) Messrs. Y. Louca and M. Economopoulos did not attend the meeting and the *sub judice* decision was taken by the Chairman and the two other members of the Commission. It decided that the interested party was, on the whole, the best, and promoted him to the permanent post of Accounting Officer 1st Grade with retrospective effect from the 1st August, 1971. 20 25

Though the *sub judice* decision was challenged on a number of grounds of law, it is the one regarding the defective composition of the respondent Commission that disposes of the case and with which I shall be dealing in this judgment. It was claimed by the applicant that Messrs. Y. Louca and M. Economopoulos were advisedly excluded from the meeting, although the whole matter was considered afresh. 30 35

Counsel for the respondent Commission after considering the written address filed on behalf of the applicant, stated that he came to the conclusion that the argument in support of this ground of law was correct and adopted by him and that if the 40

Court agreed with this legal proposition, then the *sub judice* decision should be annulled without consideration of the remaining grounds of law.

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5 The principles governing the validity of decisions taken by a collective organ with a defective composition were considered in the case of *Pissas v. The Republic* (reported in this Part at p. 30 *ante*) where reference is made to analogous situations in Greece, as set out in Kyriacopoulos, Greek Administrative Law, 4th Ed. vol. B p. 23 and the Conclusions of the Case Law of the Greek Council of State (1929–1959) p. 110. They are to
10 the effect that in order to consider a collective organ as duly composed, it is not sufficient if the members necessary to constitute a quorum are present. It must also be clearly shown that the administration made possible the presence of all mem-
15 bers of the organ by inviting them in time to be present at such a meeting. On the other hand, if a member or members are excluded on an erroneous view that they could not participate at such a meeting, the collective organ in question cannot be considered as properly composed when an administrative decision
20 is taken even if there is quorum and, therefore, such decision should be annulled on the ground of wrong composition of the organ.

In view of the fact that it was so conceded in the present case regarding the reasons for the absence of Messrs. Louca and
25 Economopoulos, the *sub judice* decision is hereby annulled on the ground that the respondent Commission at the time it took same was not properly composed. In the circumstances, however, I make no order as to costs.

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