

1981 September 11

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IOANNA PANAYIOTOU HADJICHARALAMBOUS,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTRY OF EDUCATION AND/OR  
THE MINISTER OF EDUCATION,

*Respondents.*

(Case No. 412/80).

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*Administrative Law—Misconception—Public Officers—Appointments  
—Applicant not appointed not because of a comparison of her  
merits and qualifications with those of other candidates—But  
because of a misconception by respondents of a memorandum  
of agreement relating to the appointments—Said misconception  
renders sub judice decision contrary to the general principles  
of administrative law and thus contrary to law—Sub judice deci-  
sion annulled.*

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This recourse was directed against the decision of the respon-  
dents not to appoint the applicant to the post of instructress  
in goldsmithing and silversmithing and their decision to appoint  
the interested party to the said post in preference and instead  
of the applicant. The selection of the interested party was made  
not because of a comparison of her respective merits and quali-  
fications with those of the applicant but because of a miscon-  
ception as to the effect of an agreement between the professional  
Organizations of Secondary School-teachers and the Govern-  
ment, which was approved by the Council of Ministers.

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*Held*, that the said misconception makes the *sub judice* decision  
contrary to the general principles of administrative law and  
thus contrary to law; that, therefore, the engagement of the  
interested party instead of the applicant is null and void examined

in connection with the decision of the respondents not to engage the applicant, for the reasons that they did so and which decision is also null and void and of no effect.

*Sub judice decision annulled.*

**Recourse.**

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Recourse against the decision of the respondents to appoint on contract Christina Markidou to the post of Instructress in goldsmithing and silversmithing at the Technical School of Nicosia.

*A. S. Angelides with K. Pamballis, for the applicant.*

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*G. Constantinou (Miss), Counsel of the Republic, for the respondents.*

*Cur. adv. vult.*

A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks (a) A declaration of the Court that the refusal and/or omission of the respondents to appoint her on contract to the post of Instructress in goldsmithing and silversmithing is null and void and of no effect whatsoever and that what was omitted ought to be done; (b) A declaration of the Court that the act and/or decision of the respondents to appoint as from the 23rd October, 1980, on contract Christina Markidou, hereinafter called "the interested party" instead of the applicant, is null and void and of no effect whatsoever.

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The facts of the case are as follows: The applicant between the years 1964–1973, did at first her apprenticeship and then worked as a goldsmith, silversmith, at the work-shop of Mr. Constantinides in Nicosia, and between the years 1973–1976 she worked on her own. From September 1966 to June 1970 she attended a cycle of lessons of the apprenticeship Scheme organized by the Ministry of Labour and Social Insurance and upon its successful completion she was awarded a certificate of specialization in silversmithing/goldsmithing.

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The applicant was appointed on a special contract to the post of instructress in goldsmithing/silversmithing at the Technical School of Nicosia for eight periods per week as from the 6th October 1976 and at the Professional School Larnaca with ten periods per week as from the 28th February 1977. This special contract of the applicant was renewed successively for full

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engagement as from 3rd October 1977 to the 31st August 1978, from 19th October 1978 to 31st July 1979, and from 2nd October 1979 till 31st August 1980.

On the 6th June 1980, an agreement was reached between  
5 the professional Organizations of Secondary School-teachers  
OELMEK and the Teachers of Technical Education OLTEK  
on the one hand, and the Government, which included a term  
that "for professional and other reasons as maintained by  
O.L.T.E.K." it was not proper to continue the engagement  
10 of instructors on scales B.1—B.2 (new scales A.4, A.6), and  
asked that thereafter the engagement be for the higher scales  
of instructors where higher academic qualifications are required.  
(See *exhibit 1* blue 50). This agreement was approved by  
decision No. 19.254 of the Council of Ministers, dated the  
15 26th June 1980 which reads as follows:

"The Council decided that (a) approve the agreement  
reached with the Educational Organizations OELMEK  
and OLTEK with regard to the plan for evaluation and  
restructuring of the post of Secondary and Technical  
20 Education and their emplacement in the new Salary scales  
of the Public Service as well as other special relevant matters  
as they are set out in the memorandum of agreement  
attached to the submission, and (b) authorized the Minister  
of Finance to take all necessary measures for the realiza-  
25 tion of the aforesaid agreement".

This decision, however, does not appear to have been fully  
implemented as it appears from the contents of *exhibit 6*, which  
is a letter addressed by the Director-General of the Ministry  
of Education to the Attorney General of the Republic, which  
30 says *inter alia* that up to the present moment there is nothing  
to abolish the engagement of instructors to scales B.1, B. 2.  
The non-implimentation of this has been conceded by counsel  
for the respondents.

The Council of Ministers by its decision 19.509 dated 4th  
35 September 1980 decided the following:

"In this respect the Council decided to renew the contracts  
of the School Masters of Secondary, General and Technical  
Education who were serving during the School Year 1979/  
80 but did not accept the suggestion about reduction of  
40 the teaching periods by one per week".

This appears to be a decision overriding the non-implemented previous one of the 26th June, 1980, and it is on the basis of this decision that the applicant claims that her contract ought to have been renewed alongside with the contracts of all other school-masters of Secondary, General and Technical Education. The respondents, however, appear to have overlooked or misconstrued this decision with regard to the applicant. The following minute under No. 5 is to be found in *exhibit* 1, dated 16th October, 1980, and addressed to the Director-General of the Ministry of Education:-

“Mrs. Ioanna Panayiotou HadjiCharalambous served as Instructress in godsmithing with special contract from 6th October, 1976 to 31st August, 1980. For the school year 1980-1981 she has not, as yet, been appointed and the post of Instructor in goldsmithing remains vacant.

On the basis of her qualifications Mrs. HadjiCharalambous cannot be appointed by the Educational Service Committee (she belongs to Scale B. 1) as there is a candidate who belongs to Scale B. 3 on the one hand and on the other, because the Committee cannot offer appointments any longer (after a demand of OLTEK) in Scale B. 1 and agreement with the Government.

The Committee before proceeding to the filling of the post requests you to examine whether the decision of the Council of Ministers for renewal of the appointments of all who served on contract for the school year 1979-1980 covers this case.

If the answer is in the affirmative she has to be offered a special contract, if not, we request the matter to be sent to the Committee for appointment of the only candidate for the post”.

The reply to this by the Director-General dated 20th October, 1980, Minute No. 6, is as follows:

“Note (5): My view is that the decision does not cover case”.

Upon that the interested party was appointed to the post instead of the applicant.

It appears from the aforesaid and in particular from the fact

that the agreement not to engage Educational Officers on Scales B.1 and B.2 and instead engage to the higher scales where higher academic qualifications were demanded, was not put into force that the only course in this case open to the respondents was to comply with the aforementioned Decision No. 19.509 of the Council of Ministers dated 14th September, 1980, whereby it had decided to renew the contracts of all school-masters of Secondary, General and Technical Education who were serving on contract during the previous year. If this decision was followed then, the applicant would have been engaged on contract. That was not done, obviously through a misconception as to the effect of the memorandum of agreement and its approval by the Minister by its decision of the 26th June, 1980.

No doubt the interested party has higher qualifications than the applicant and her qualifications entitle her to emplacement in Scale B.3. Her selection, however, for engagement was made not because of a comparison of the respective merits and qualifications of these two candidates, but because of the exclusion of the applicant as a result of the misconception referred to earlier in this judgment, which makes it contrary to the general principles of Administrative Law and thus contrary to Law. That being so, the engagement of the interested party instead of the applicant is null and void examined in connection with the decision of the respondents not to engage the applicant, for the reasons that they did so, and which decision is also null and void and of no effect.

For all the above reasons this recourse succeeds, the *sub judice* decisions are annulled, but in the circumstances I make no order as to costs.

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