

1982 September 11

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS PAPAKYRIACOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMISSION,

Respondent.

(Case No. 453/80).

Educational officers—School masters—Posts of—May be filled on contract by renewing existing contracts—No need to exercise a discretion arises—Sections 5(1) and 27(1) of the Educational Service Law, 1969 (Law 10/69) and regulation 10 of the Educational Officers (Teaching Staff) (Appointments, Emplacements, Transfers, Promotions and Related Matters) Regulations, 1972.

The following two issues arose for consideration in this course:

- 10 (a) Whether the Council of Ministers had power to fill posts of Schoolmasters on contract by deciding to renew existing contracts; and
- 15 (b) whether the respondent Commission in renewing existing contracts had to exercise any discretion in this connection under the provisions of section 5(1) of the Educational Service Law, 1969 (Law 10/69) and regulation 10 of the relevant Regulations of 1972.

Held, (1) that section 27(1)* of Law 10/69 empowered the Council of Ministers to decide to fill posts of schoolmasters on

* Section 27(1) provides as follows:

"A permanent post is filled either on permanent basis or on a temporary basis on contract for a specified period or on a month-to-month basis, as the Council of Ministers may decide".

contract by renewing existing contracts including those of the interested parties.

(2) That there was no need to comply once again with section 5(1) of Law 10/69 and regulation 10 of the Regulations of 1972 when the existing contracts were renewed because such compliance had already taken place when the interested parties were appointed on contract for the previous school year.

Application dismissed.

Recourse.

Recourse against the decision of the respondent whereby the interested parties were appointed to the post of master of mathematics in preference and instead of the applicant.

A.S. Angelides with N. HjiGavriel and Ch. Ierides, for the applicant.

R. Vrahimi (Mrs.), for the respondent. 15

Y. Charalambous, for the interested party Ph. Charalambous.

Cur. adv. vult.

TRIANAFYLLIDES P. read the following judgment. By means of the present recourse the applicant challenges, in effect, the decision of the respondent Educational Service Commission to appoint, instead of him, P. HjiPanayi, D. Ioannides, D. Ioannou, Ph. Charalambous, Fr. Peyiotou, D. HjiApostolou, I. Georghiadou and Chr. Tamani (to be referred to hereinafter as the "interested parties") to the post of master of mathematics as from 1st September 1980.

The applicant is a graduate of the Faculty of Mathematics of Athens University. He applied for appointment as a school-master and his name was included in the list of those eligible to be appointed.

The interested parties were, also, included in such list.

On 19th September 1979 the applicant was given an appointment on contract to the post of master of mathematics for the school-year 1979/1980 but, as he was unable for personal reasons to accept such appointment, it was revoked by the respondent Commission on 25th September 1979.

The interested parties were appointed by the said Commission

for the school-year 1979/1980 on diverse dates ranging from 26th September 1979 to 23rd November 1979; they were appointed on contract.

5 On 16th September 1981 the applicant informed the Commission that he was seeking once again appointment as master of mathematics.

10 On 4th September 1980 the Council of Ministers (see its decision No. 19.509) decided that there should be renewed all the contracts of schoolmasters who were serving on contract during the school-year 1979/1980. As a result the Director-General of the Ministry of Education, by a letter dated 8th September 1980, requested the respondent Commission to proceed to renew such contracts as from 1st September 1980. Thus, at its meeting on 10th September 1980 the Commission
15 decided to renew, for the school-year 1980/1981, the appointments on contract of all those who had been serving on contract during the previous school-year, and among them were the interested parties.

20 As no new appointments were made for the school-year 1980/1981 the applicant was not appointed and he filed the present recourse.

25 Counsel for the applicant submitted that since there is no express provision either in the Educational Service Law, 1969 (Law 10/69) or in the Educational Officers (Teaching Staff) (Appointments, Emplacements, Transfers, Promotions and Related Matters) Regulations, 1972 (see No. 205 in the Third Supplement to the Official Gazette of 10.11.1972) empowering the Council of Ministers to decide to renew contracts of educationalists, its aforementioned decision of 4th September 1980,
30 for the renewal of contracts which had actually expired on 31st August 1980, was not validly reached.

Section 27(1) of Law 10/69 reads as follows:

35 “27.-(1) Μόνιμος θέσις πληροῦται εἴτε μονίμως, εἴτε προσωρινῶς ἐπὶ συμβάσει δι’ ὠρισμένον χρονικὸν διάστημα, εἴτε ἀπὸ μηνὸς εἰς μῆνα, ὡς τὸ Ὑπουργικὸν Συμβούλιον ἤθελεν ὑποφασίσει”.

(“A permanent post is filled either on a permanent basis or on a temporary basis on contract for a specified period

or on a month-to-month basis, as the Council of Ministers may decide’’).

In my opinion the above legislative provision empowered the Council of Ministers to decide to fill posts of schoolmasters on contract by renewing existing contracts, including those of the interested parties, and, therefore, the aforesaid submission of counsel for the applicant is not well-founded.

It has been further argued on behalf of the applicant that because of the decision in question of the Council of Ministers the respondent Commission had to renew the contracts of the interested parties without exercising any discretion in this connection and, thus, the provisions of section 5(1) of Law 10/69 and regulation 10 of the Regulations of 1972 have been contravened.

It is not disputed that under section 5(1) of Law 10/69 the Commission is the organ empowered to make appointments of educational officers; and under regulation 10 of the Regulations of 1972 appointments on contract are made in order of priority from among the candidates who are inscribed on the list of those eligible to be appointed; and on the relevant list the serial number of the applicant was 16, and those of the interested parties were 98, 101, 102, 107, 111, 116, 118 and 182.

In my opinion there was no need to comply once again with the aforesaid legislative provisions when the contracts of the interested parties were renewed for the school-year 1980/1981, because, as it appears from the material before me, such compliance had already taken place when the interested parties were appointed on contract for the school-year 1979/1980. On that occasion all relevant considerations were duly taken into account in accordance with the legislative provisions and principles of law applicable to such a matter; and, actually, as already stated, the applicant was then given an appointment, too, and in advance of the interested parties, but he did not accept it. In effect, no new appointment was made for the school-year 1980/1981, but only the existing ones, which had been duly made, were prolonged by being renewed.

For all the foregoing reasons I have not been satisfied that there exists good ground for annulling the appointments on

contract of the interested parties and, therefore, this recourse has to be dismissed. In the light, however, of all relevant considerations I have decided not to make an order as to its costs against the applicant.

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*Recourse dismissed with no order
as to costs.*