1984 October 12

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NICOS MYLONAS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE PRESIDENT OF THE HOUSE OF REPRESENTATIVES,
2. THE DIRECTOR-GENERAL, HOUSE OF REPRESENTATIVES,
3. THE PUBLIC SERVICE COMMISSION,

Respondents.

(*Case No.* 150/83).

Public Officers—Acting appointments—Discretion of Public Service Commission—Not limited to satisfying itself that the candidate proposed by the appropriate authority has the qualifications and that in every other respect the choice is left exclusively to the appropriate Authority—But it has a duty to select the best candidate—Article 125.1 *of the Constitution—Section* 42 *of the Public Service Law,* 1967 (*Law* 33/67).

Constitutional Law—Constitutionality of legislation—Principles applicable—Section 42 *of the Public Service Law,* 1967 (*Law* 33/67) *not contrary to Article* 125.1 *of the Constitution.*

Public Service Law, 1967 (*Law* 33/67)—*Acting appointments—Section* 42 *of the Law—Construction—Constitutionality—Not contrary to Article* 125.1 *of the Constitution.*

Public Service—Political authority—Need for separation between the two.

Decided cases—Doctrine of binding precedent.

On the recommendation of Mr. G. Ladas, the President of the House of Representatives, the Public Service Commission,

acting under section 42 of the Public Service Law, 1967 (Law 33/67) made an acting appointment to the post of Assistant Director-General at the Office of the House of Representatives, and appointed the interested party, the person nominated by Mr. Ladas. It was obvious from the decision of the Commission that they felt bound in law to adopt the recommendations of the appropriate authority—which was the President of the House of Representatives—treating their discretion as limited to verifying that the proposed candidate possessed the qualifications required by law.

Upon a recourse by the applicant:

Held, (1) that Article 125.1* entrusts to the Public Service Commission power to appoint civil servants to the exclusion of every other authority; that Article 125.1 covers the whole spectrum of powers, exerciseable in relation to the public service, and vests them in the Public Service Commission; that the word "appoint" in Article 125.1 etimologically and in its ordinary connotation, covers both a permanent and a temporary appointment; that the makers of the Constitution intended to entrust power in the Public Service Commission to make both permanent and temporary appointments, is reinforced by the words following "to appoint", that is, "να μονιμοποιεί" (to make permanent); and that, consequently, the Public Service Commission is, under the Constitution, the sole body competent to make appointments of every category in the public service; that no departure from the Constitution can be sanctioned in the absence of necessity and constitutional provisions in relation to the public service are no exception; that in the instant case there were no facts founding necessity to legislate in deviation of the provisions of the Constitution; and that, accordingly, no one other than the Public Service Commission can assume power in relation to appointments in the Civil Service, and any law violating this order must be declared unconstitutional, as well as any action taken in defiance thereof.

(2) *After stating the principles governing the constitutionality of statutes—vide pp.* 1103-1104 *post:*

That whenever the language of a statute can, by a reasonable interpretation—not necessarily the most obvious one—be

* Article 125.1 is quoted at p. 1101 post.

construed in a manner compatible with the provisions of the Constitution the law will be saved; that it could not have been the intention of the legislature to defeat the autonomy of the civil service and the separation between political and civil authority by entrusting selection of appointees to the public service to holders of political office; that it is perfectly possible, on consideration of the wording of s.42 of the Public Service Law, 1967, to construe and interpret it as limiting the powers of the appropriate authority under s.42 to requesting the Public Service Commission to activate machinery for the filling of a post on an acting basis; that such interpretation is also compatible with the spirit of the law, revealed in s.17 as well, to leave initiative for the filling of vacancies in the public service to the executive branch of government who have responsibility for the planning and management of the economy of the country; that, therefore, given the correct effect of s.42, the Public Service Commission obviously misconceived its powers and in the end abdicated its duty to select the candidate best suited to act as Assistant Director-General at the Office of the House of Representatives; accordingly its decision must be annulled.

Held, further, that the Constitution ordains a clear separation between political authority and the Civil Service (see *Frangoulides* v. *Republic* (1966) 3 C.L.R. 676); that for Departments of the State, "appropriate authorities" are the Minister and in the case of the House of Representatives, the President of the House of Representatives, that is, holders of political office; that if the discretion of the Public Service Commission is limited to satisfying itself that the candidate proposed to occupy the post on an acting basis, has the qualifications and that in every other respect the choice is left exclusively to the discretion of the Appropriate Authority, the inevitable result would be that appointments in the public service on an acting basis would be effected by the Political Authority; and that considering that acting appointments may be for an indefinite period of time, as the appointment under review appears to be, the political Authorities would be at liberty to determine for long periods of time who shall hold office in the public service and inescapably the Constitutional power of the Public Service Commission to decide who should hold office in the public service would be neutralised in at least some respects (*Olympios* v. *Republic* (1974) 3 C.L.R. 17 and *Tsiropoullou* v. *Republic* (1983) 3 C.L.R. 313

not adopted—vide pp. 1099-1101 as to the doctrine of binding precedent).

Sub judice decision annulled.

Cases referred to:

Olympios v. *Republic* (1974) 3 C.L.R. 17;

Tsiropoullou v. *Republic* (1983) 3 C.L.R. 313;

Republic v. *Demetriades* (1977) 3 C.L.R. 213;

Frangos and Others v. *Republic* (1982) 3 C.L.R. 53;

Re Cuschla [1979] 3 All E.R. 415;

Frangoulides v. *Republic* (1966) 3 C.L.R. 676;

Ibrahim v. *Attorney-General*, 1964 C.L.R. 195;

Markides and Another v. *Republic* (1984) 3 C.L.R. 677;

Kazamias v. *Republic* (1982) 3 C.L.R. 239;

Republic v. *Louca and Others* (1984) 3 C.L.R. 241,

Police v. *Ekdotiki Eteria* (1982) 2 C.L.R. 63 at p. 78;

Board for Registration of Architects and Civil Engineers v. *Kyriakides* (1966) 3 C.L.R. 640;

Sofroniou and Others v. *Municipality of Nicosia* (1976) 3 C.L.R. 124 at p. 159;

Fox v. *Washington*, 59 Law. Ed. 573 at pp. 575, 576.

Recourse.

Recourse against the decision of the respondents whereby an acting appointment to the post of Assistant Director-General at the Office of the House of Representatives was made and the interested party was appointed.

Chr. Triantafyllides with *Chr. Demetriou* (*Mrs.*), for the applicant.

N. Charalambous, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. On the recommendation of Mr. G. Ladas, the President of the House of Representatives, the Public Service Commission made an acting appointment to the post of Assistant Director-General at the Office of the House of Representatives, and appointed Mr. C. Christoforou, the interested party, the person nominated by Mr. Ladas. The post thus filled belonged to the permanent establishment

of the Office of the House of Representatives, in accordance with the Services and Personnel of the House of Representatives Law, 24/61. The substantive post remained vacant since 1963 when its incumbent abandoned his post.

By a letter dated 1.2.1983, Mr. Ladas requested the Public Service Commission to make an acting appointment to the post, and invited them to appoint the interested party, the Head of the Standing Committees Services of the House of Representatives. The Public Service Commission responded favourably to the request and appointed the person nominated on satisfying themselves that he possessed the qualifications laid down in the scheme of service. It is obvious from their letter of 14.2.1983 that they felt bound in law to adopt the recommendation of the appropriate authority, treating their discretion as limited to verifying that the proposed candidate possessed the qualifications required by law. In accordance with s.2 of the Public Service Law—33/67, the President of the House of Representatives is the appropriate authority respecting the personnel in the establishment of the House of Representatives.

The applicant, the senior officer in the Publications and Translations Department of the House, felt aggrieved at having been left out and objected to the appointment of his colleague in preference to him. Hence the present proceedings. The legitimacy of his interest, in the review of the validity of the sub judice action, is not questioned or disputed.

Counsel for the applicant made a three-pronged attack on the legality of the action taken. It was challenged as—

(a) unconstitutional for infringement of Article 125, defining the competence of the Public Service Commission, and generally constitutional order respecting the civil service,

(b) illegal for violation of the provisions of s.42 of Law 33/67 and,

(c) defective for material misconception of the facts and the law relevant to their duties.

The first two issues require us to focus attention on the powers and competence of the Public Service Commission under the Constitution—Article 125 in particular—and the compatibility

of s.42 with the constitutional framework in relation to the public service, and the provisions of Article 125. If the provisions of s.42 are found to conflict with Article 125 or constitutional order in matters of public service, they must be declared unconstitutional and be eschewed from the statute. Of course, a section of the law will not be declared unconstitutional unless incompatibility with the Constitution is unavoidable on any reasonable construction of its provisions. If found that the Public Service Commission correctly perceived the law in relation to their powers to make acting appointments, they had little else to do but rubberstamp, as they did, the nomination of the appropriate authority.

Counsel for the Republic supported the decision as valid in law. He submitted, the appreciation of the law by the Public Service Commission concerning acting appointments, is in line with at least two decisions of the Supreme Court that establish that only a minimal discretion resides with the Public Service Commission in making acting appointments. Once they were satisfied that the person nominated to serve in an acting capacity possessed the qualifications envisaged by the scheme of service, they had no choice but to implement the recommendation and make the suggested appointment. The cases relied upon are two decisions of the Supreme Court at first instance, namely, the decisions of *Malachtos, J.*, in *Andreas Olympios* v. *The Republic* (1974) 3 C.L.R. 17, and of *Savvides, J.*, in *Tsiropoullou* v. *The Republic* (1983) 3 C.L.R. 313. Each one of the above decisions lends direct support to the proposition propounded by counsel.

Counsel for the applicant invited me to depart from the ratio of the above cases, submitting I am free to do so if satisfied they are wrong. The doctrine of binding precedent that has deep roots in our legal system, does not bind a Court of law to follow decisions of Courts of coordinate jurisdiction. Freedom is acknowledged to depart from the ratio of decisions of Courts of coordinate jurisdiction if satisfied they are wrong in law*. Decisions of Courts of parallel jurisdiction carry,

* *The Republic (Minister of Finance and Another)* v. *Demetrios Demetriades* (1977) 3 C.L.R. 213; *Frangos And Others* v. *The Republic* (1983) 3 C.L.R. 53—*Re Cuschla Ltd.* [1979] 3 All E.R. 415.

on the other hand, considerable weight and are normally a source for guidance. They are of high persuasive authority but not binding. The readiness of the Court to depart from them is inevitably greater if the attention of the Court is not drawn, in the first instance, to legal propositions that may cast a different complexion or vary the statement of the law on a subject. Here, is must be noticed that in neither of the above two cases was a question of constitutionlity of s.42 raised. Therefore, the Court could, and, in fact, should proceed on the assumption that the law was constitutional. A question of constitutionality was not encanvassed in either of the above two cases, nor was the Court asked to construe s.42 in a manner ensuring its compatibility with the provisions of the Constitution. Below, I shall concern myself with the order prescribed by the Constitution in relation to the public service, the powers and competence of the Public Service Commission under Article 125, and, thereafter, with the construction and interpretation of s.42.

In the cases of *Olympios* and *Tsiropoullou*, the Court merely concerned itself with the construction of s.42 of Law 33/67. It was held that as a matter of interpretation the discretion of the Public Service Commission is limited to satisfying itself that the candidate proposed to occupy the post on an acting basis, has the qualifications. In every other respect, the choice is left exclusively to the discretion of the appropriate authority. It is an interpretation of far reaching consequences considering the definition of "appropriate authority" applied by s.2. For departments of the State, "appropriate authorities" are the Ministers and in the case of the House of Representatives, the President of the House of Representatives, that is, holders of political office. If the ratio of the above cases is adopted, the inevitable result would be that appointments in the public service on an acting basis would be effected by political authority. And considering that acting appointments may be for an indefinite period of time, as the appointment under review appears to be, the political authorities would be at liberty to determine for long periods of time who shall hold office at certain posts in the public service. Under the Public Service Law, it is a matter for the appropriate authority to determine whether a post should be filled on a permanent or temporary basis. Ines-

capably, the constitutional power of the Public Service Commission to decide who shall hold office in the public service, would be neutralised in at least some respects.

Now, we have it from the highest source, the Full Bench of the Supreme Court as a matter of proper appreciation of the constitutional order, that the civil service should be autonomous, a framework that guarantees the independence of the civil service from political authority—See, *Charilaos Frangoulides* v. *The Republic* (1966) 3 C.L.R. 676. In its unanimous judgment the Supreme Court pointed out that the Constitution ordains a clear separation between political authority and the civil service. The autonomy of the public service and its independence from political authority is safeguarded by the establishment of an independent body, that is the Public Service Commission, with exclusive competence to appoint, transfer, retire and dismiss civil servants.

Article 125 of the Constitution entrusts to the Public Service Commission power to appoint civil servants to the exclusion of every other authority. This is made clear by the plain provisions of Article 125.1. The Public Service Commission has power—

> "...νὰ διορίζῃ, μονιμοποιῇ, ἐντάσσῃ εἰς τὴν δύναμιν τῶν μονίμων ἢ τῶν δικαιουμένων συντάξεως ὑπαλλήλων, προάγῃ, μεταθέτῃ, καθιστᾶ συνταξιούχους δημοσίους ὑπαλλήλους καὶ νὰ ἀσκῇ πειθαρχικὴν ἐξουσίαν ἐπ' αὐτῶν, περιλαμβανομένων τῆς ἀπολύσεως ἢ τῆς ἀπαλλαγῆς ἀπὸ τῶν καθηκόντων αὐτῶν".

(English Translation)

> "To appoint, to make permanent, to position in the permanent personnel establishment, or in the class of officers entitled to pension, promote, transfer, make pensionable civil servants, and exercise disciplinary power over them, including the power to dismiss or relieve from duties".

Appreciated in its entirety Article 125.1 covers the whole spectrum of powers, exerciseable in relation to the public service, and vests them in the Public Service Commission. The word "appoint" etimologically and in its ordinary connotation, covers both a permanent and a temporary appointment. That

the makers of the Constitution intended to entrust power in the Public Service Commission to make both permanent and temporary appointments, is reinforced by the words following "to appoint", that is, "να μονιμοποιεί" (to make permanent). Consequently, the Public Service Commission is, under the Constitution, the sole body competent to make appointments of every category in the public service.

No departure from the Constitution can be sanctioned in the absence of necessity* and constitutional provisions in relation to the public service are no exception. In *Makrides And Another* v. *The Republic***, I concluded, after review of the circumstances under which deviation from the Constitution may be countenanced that:-

> "In the absence of facts founding necessity to legislate in deviation of the provisions of the Constitution respecting the competence of the Public Service Commission as well as the constitutional framework dinstancing holders of political office from the manning of the civil service, the purported exercise of competence by the Council of Ministers in relation to the appointment of Registration Officer was wholly abortive. It could not be countenanced except as a decision taken in excess of the powers of the Council of Ministers and in abuse of those of the Public Service Commission".

There are powerful dicta in *Kazamias* v. *The Republic****, supporting the same proposition. Observations made by the members of the Full Bench of the Supreme Court in *The Republic* v. *Louca And Others***** point to the same direction.

In the light of the above analysis of the constitutional position relevant to the civil service, it is clear to my mind that no one other than the Public Service Commission can assume power in relation to appointments in the civil service. Any law violating this order must be declared unconstitutional, as well as any action taken in defiance thereof. The question arises whether

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* *Ibrahim* v. *Attorney-General*, 1964 C.L.R. 195.

** (1984) 3 C.L.R. 677.

*** (1982) 3 C.L.R. 239.

**** (1984) 3 C.L.R. 241.

s.42 of Law 33/67 violates constitutional order and specific provisions thereof.

There is a presumption that every law is constitutional unless the contrary is affirmatively established. It is a corollary of the principle of law that the legislative assembly intends to legislate within the Constitution and subject to its provisions. The presumption will not be easily defeated by the use of vague, unhappy, and on occasions inconclusive language in expressing their intentions. Only when the language adopted cannot, by any reasonable interpretation, be reconciled with the commands of the Constitution, can we conclude that the legislature transgressed the limitations of its power. Whenever the language of a Statute can, by a reasonable interpretation—not necessarily the most obvious one—be construed in a manner compatible with the provisions of the Constitution, the Law will be saved. As much was settled in *Police* v. *Ekdotiki Eteria**. There, we held—

> "In deciding upon the constitutionality of a statute it is axiomatic that if susceptible to an interpretation reconcilable with the provisions of the Constitution, a beneficial construction must be adopted saving the enactment. A beneficial construction may be adopted provided this can be achieved without thwarting the language of the Act"**.

Examining the provisions of s.42—Law 33/67 in this spirit, it is perfectly possible to uphold its constitutionality. There is nothing in the section itself compelling us to hold that the legislature intended to vest power in the appropriate authority to choose the candidate to be selected for an acting appointment. Such a construction would not only offend the express provisions of Article 125.1 of the Constitution but constitutional order as well, in the wider sense, in view of the definition of "appropriate authority" supplied by s.2 of the law. It cannot have been the intention of the legislature to defeat the autonomy of the

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* (1982) 2 C.L.R. 63, 78.

** See, *The Board for Registration of Architects and Civil Engineers* v. *Christodoulos Kyriakides* (1966) 3 C.L.R. 640.
Neophytos Sofroniou & Others v. *The Municipality of Nicosia & Others* (1976) 3 C.L.R. 124 at 159.
Fox v. *Washington*, 59 Law. ed., 573, at 575, 576;
Tsatsos Interpretation of Statute in Constitutional Law, 1970, pp. 26 and 27.

civil service and the separation between political and civil authority by entrusting selection of appointees to the public service to holders of political office. It is perfectly possible, on consideration of the wording of s.42, to construe and interprete it as limiting the powers of the appropriate authority under s.42 to requesting the Public Service Commission to activate machinery for the filling of a post on an acting basis. Such interpretation is also compatible with the spirit of the law, revealed in s.17 as well, to leave initiative for the filling of vacancies in the public service to the executive branch of government who have responsibility for the planning and management of the economy of the country. If I felt constrained, on consideration of the language of s.42, to construe it as vesting power in an appropriate authority to effectively choose acting appointees in the public service, I would unhesitatingly declare s.42 as unconstitutional but, as already stated, such construction is not unavoidable.

Given the correct effect of s.42, the Public Service Commission obviously misconceived its powers and in the end abdicated its duty to select the candidate best suited to act as Assistant Director–General at the Office of the House of Representatives.

In the result, the recourse succeeds. The decision is set aside. Let there be no order as to costs.

Sub judice decision annulled. No order as to costs.