

1984 March 15

[TRIANAFYLLIDES, P., L. LOIZOU, MALACHTOS, LORIS,  
STYLIANIDES, JJ.]

ANDREAS VLAHOU AND OTHERS,

*Appellants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH THE  
EDUCATIONAL SERVICE COMMISSION,

*Respondent.*

*(Revisional Jurisdiction Appeal No. 316).*

5 *Legitimate interest—Article 146.2 of the Constitution—Acceptance  
of promotions to post of Instructor in Secondary Technical Edu-  
cation—On salary scale 9 without any reservation—No legitimate  
interest to file a recourse against the non-appointment to posts  
with salary scales A8, A10 and A11.*

10 After the appellants were offered, on the 16th July 1982,  
promotion to posts of Instructor with salary scale A9 they  
replied in writing that they accepted their promotions with  
full reservation of their rights as regards the date of commence-  
ment of such promotions to the posts in question.

15 Though in their recourses as originally drafted the appel-  
lants sought the annulment of the decision of the respondent  
Educational Service Commission to promote them as Instructors,  
in Secondary Technical Education, to posts with salary scale  
A9 as from only the 1st June 1982 and not as from an earlier  
date in their written address before the trial Judge their claim  
was reframed and became, in effect, a claim that they ought  
to have been promoted under section 4(b) of Law 12/81, to posts  
with salary scales A8, A10, A11.

20 *Upon appeal against the dismissal of their recourses:*

*Held, that inasmuch as the appellants have accepted their  
promotions to the said posts with salary scale A9 without any  
reservation, except as regards the date of commencement of*

such promotions, they do not possess a legitimate interest, as envisaged under Article 146.2 of the Constitution, entitling them to challenge their said promotions by means of a recourse under Article 146 (see, inter alia, *Myrianthis v. The Republic*, (1977) 3 C.L.R. 165, 168); and that, accordingly, the appeal must be dismissed. 5

*Appeal dismissed.*

Cases referred to:

- Myrianthis v. Republic* (1977) 3 C.L.R. 165 at p. 168;
- HadjiConstantinou v. Republic* (1980) 3 C.L.R. 184 at p. 194; 10
- Tomboli v. C.Y.T.A.* (1980) 3 C.L.R. 266 at p. 277; and on appeal (1982) 3 C.L.R. 149 at p. 154;
- Neocleous v. Republic* (1980) 3 C.L.R. 497 at p. 508;
- Metaphoriki Eteria "Ayios- Antonios" Spilia-Courдали Ltd. v. Republic* (1981) 3 C.L.R. 221 at p. 236; 15
- Zambakides v. Republic* (1982) 3 C.L.R. 1017 at p. 1025;
- Ioannou v. Republic* (1983) 3 C.L.R. 150 at p. 154;
- Stylianides v. Republic* (1983) 3 C.L.R. 672 at p. 678;
- Group of Five Bus Tours Ltd. v. Republic* (1983) 3 C.L.R. 793 at p. 804; 20
- Goulielmos v. Educational Service Commission* (1983) 3 C.L.R. 883 at p. 903.

**Appeal.**

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Pikis, J.) given on the 27th April, 1983 (Revisional Jurisdiction Case No. 403/82)\* whereby their recourse against the decision of the respondent to emplace applicants to posts on salary scale A9 as from 1.6.1982 and not from an earlier date was dismissed. 25

*A.S. Angelides*, for the appellants. 30

*R. Vrahimi (Mrs.)*, for the respondents.

*Cur. adv. vuit.*

\* Reported as *Paphitis and Others v. Republic* in (1983) 3 C.L.R. 255.

TRIANTAFYLIDIS P. read the following judgment of the Court. The appellants, by a recourse (No. 403/82) filed under Article 146 of the Constitution, were seeking, in effect, the annulment of the decision of the respondent Educational Service Commission to promote them as Instructors, in Secondary Technical Education, to posts with salary scale A9 as from only the 1st June 1982 and not as from an earlier date.

Their recourse was dismissed and they then filed the present appeal.

The sub judge decision of the respondent Commission was reached on the 19th June 1982 in accordance with section 4(a) of the Public Educational Service (Increase of Salaries, Restructuring and Placement of Certain Posts on Unified Salary Scales) Law, 1981 (Law 12/81), as amended by Laws 23/81, 51/81 and 26/82.

By means of the written address which was filed by counsel for the appellants before the trial Judge their claim was re-framed and, instead of being only a claim based on the complaint that they ought to have been promoted to posts on salary scale A9 earlier than the 1st June 1982, it became, in effect, a claim that they ought to have been promoted, under section 4(b) of Law 12/81, to posts with salary scales A8, A10, A11.

Counsel appearing for the respondent in her written address did not object, as she might have done, to the alteration of the claim of the appellants and she proceeded to answer the re-framed claim of the appellants; and the trial Judge determined the case on the basis of the written addresses of counsel.

After the appellants were offered, on the 16th July 1982, promotion to posts of Instructor with salary scale A9 they replied in writing—(appellant 1 and appellant 3 on the 25th September 1982 and appellant 2 on the 24th September 1982)—that they accepted their promotions with full reservation of their rights as regards the date of commencement of such promotions to the posts in question; and, also, counsel appearing for appellants 1 and 3 (by letters dated 2nd August 1982 and 4th August 1982, respectively) accepted on their behalf the offers made to them for promotion, but with reservation of their rights, as regards the date of commencement of their promotions.

The matter of the date as from which their promotions should have been effected was argued before the trial Judge who, however, did not find any merit in it. It was raised, also, by means of one of the grounds of appeal in the present proceedings before us but this ground was not, eventually, argued and thus we must regard it, for the purposes of this appeal, as having been abandoned. 5

So, we are faced only with the claims of the appellants that they ought to have been promoted to posts with salary scales A8, A10, A11, under section 4(b) of Law 12/81, instead of to posts with salary scale A9, under section 4(a) of the same Law. 10

We have reached the conclusion that inasmuch as the appellants have accepted their promotions to the said posts with salary scale A9 without any reservation, except as regards the date of commencement of such promotions, they do not possess a legitimate interest, as envisaged under Article 146.2 of the Constitution, entitling them to challenge their said promotions by means of a recourse under Article 146; and this conclusion is based on well established principles of administrative law and on the correct application of the said Article 146.2 (see, in this respect, inter alia, *Myrianthis v. The Republic*, (1977) 3 C.L.R. 165, 168, *HadjiConstantinou v. The Republic*, (1980) 3 C.L.R. 184, 194, *Tomboli v. The Cyprus Telecommunications Authority*, (1980) 3 C.L.R. 266, 277 and on appeal (1982) 3 C.L.R. 149, 154, *Neocleous v. The Republic*, (1980) 3 C.L.R. 497, 508, *Metaphoriki Eteria "Ayios Antonios" Spilia-Cour dali Ltd. v. The Republic*, (1981) 3 C.L.R. 221, 236, *Zambakides v. The Republic*, (1982) 3 C.L.R. 1017, 1025, *Ioannou v. The Republic*, (1983) 3 C.L.R. 150, 154, *Stylianides v. The Republic*, (1983) 3 C.L.R. 672, 678, *The Group of Five Bus Tour Ltd. v. The Republic*, (1983) 3 C.L.R. 793, 804 and *Goulielmos v. The Educational Service Commission*, (1983) 3 C.L.R. 883, 903). 15 20 25 30

Consequently, this appeal, as well as the recourse of the appellants, has to be dismissed and it is not necessary to deal with any other reasons for which the recourse of the appellants was dismissed by the trial Judge; and any issues which have been argued in relation to such reasons we leave open. 35

We have decided to make no order as to the costs of this appeal.

*Appeal dismissed. No order as to costs.* 40