1984 November 30

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KIKA GAVA,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE PUBLIC SERVICE COMMISSION,

Respondents.

(Case No. 196/82).

Res judicata—Operative findings of a Court of revisional jurisdiction —Binding upon the Administration—Annulment of decision relating to promotions on the ground that it defied the criteria of merit, qualifications and seniority—Respondents repeating annulled decision in evident disregard of the findings of the Court —New decision invalid for breach of the provisions of Article 146.5 of the Constitution—And for failure of the respondents to reason departure from the view taken by the Court of the material facts of the case.

Upon a recourse by the applicant, against the decision of the respondents to promote the interested parties to the post of Administrative Officer 1st Grade, the Court annulled the promotions on, inter alia, the ground that the decision defied the criteria of suitability for promotion—merit, qualifications, seniority —that the Public Service Commission purported to follow.

Following the decision of the Court the respondents re-examined the matter by reference to the factual and legal situation obtaining at the time the annulled decision was taken by proceeding to re-assess the self same material they had taken into account in arriving at the annulled decision; and notwithstanding the decision of the Court on the effect of such material, particularly the fact that by the application of the statutory norm of suitability

—merit, qualifications and seniority—the interested parties did not qualify as more suitable for promotion compared to the applicant, the respondents repeated the annulled decision in evident disregard of the findings of the Court. Hence this recourse.

Held, that the judgments of Courts of revisional jurisdiction are binding upon all organs and authorities of the Republic (see Article 146.5 of the Constitution); that, therefore, every operative finding of the Court is binding upon the administration which is no longer at liberty to take a contrary view of a given set of facts; that judicial pronouncements, irrespective of their precise juridical effect, should be duly observed by the Administration as a potent force for ensuing sound administration and they should not be lightly by-passed as seems to have been the case here; and that, therefore, this Court is bound to declare the sub judice decision invalid for breach of the provisions of Article 146.5.

Held, further, that even if the pertinent findings were not operative, this Court would again be compelled to annul the sub judice decision for failure to reason departure from the view taken by the Court of the material facts of the case.

Sub judice decision annulled.

Cases referred to:

Gava v. *Republic* (1981) 3 C.L.R. 476;

Pieris v. *Republic* (1983) 3 C.L.R. 1054 at pp. 1064-1067;

Karageorghis v. *Republic* (1983) 3 C.L.R. 1211;

Constantinou v. *CY.T.A.* (1972) 3 C.L.R. 116.

Recourse.

Recourse against the decision of the respondents to promote the interested parties to the post of Administrative Officer First Grade in preference and instead of the applicant.

Chr. Triantafyllides, for the applicant.

R. Gavrielides, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. The history of the proceedings goes back to 1978 when the Public Service Commission decided to promote the interested parties to the post of Administrative Officer First Grade. Recitation of the salient facts is essential in order to resolve the questions calling for an answer, especially the submission that the decision under consideration in the present proceedings was taken in breach of or defiance to the doctrine of res judicata, prohibiting administrative action in contravention to a judgment of a Court of revisional jurisdiction.

To begin with the decision of 1978, the Public Service Commission was required to make promotions to the post of Administrative Officer first grade. It was a difficult task considering that the eligible candidates served in different departments of government and were assessed by different reporting officers. The applicant and the interested parties were among the candidates competing for promotion. Eventually, they promoted the interested parties, an action disputed as invalid by the applicant. She challenged it as ill founded, resting on a baseless recommendation of the Director of the Personnel Department and as self-contradictory in that the decision defied the criteria of selection they purported to follow in the light of the material bearing on the candidates.

The Court vindicated the complaint of the applicant—*Gava v. Republic* (1981) 3 C.L.R. 476—and annulled the decision. Need arises to examine the reasons for the discharge of the decision to be able to ascertain whether the decision currently under review defies the operative part of the judgment of the Court, that is, the reasons for annulment. On examination of the judgment it emerges, the decision to promote the interested parties was discharged for two separate reasons, each justifying of itself the annulment of the decision:-

(a) Reliance on the ill founded recommendations of the Director of the Department of Personnel vitiating the factual substratum of the decision. Whereas the Director of Personnel had no personal knowledge of the candidates and made no inquiries to ascertain their capabilities and suitability for appointment, he ventured an opinion that had no factual basis. Certainly, it did not reflect the objective picture of

the candidates, as disclosed in their confidential reports.

(b) Defective reasoning: The decision defied the criteria of suitability for promotion—merit, qualifications, seniority—that the Public Service Commission purported to follow.

Following the decision of the Court the respondents became seized anew of the matter, dutybound to re-examine the issue by reference to the factual and legal situation obtaining at the time the revoked decision was taken. As the minutes of their meeting of 25th January, 1982 indicate, the respondents, guided by the decision of the Court, excluded, at the outset, from consideration the recommendations of the Director of the Department of Personnel. In so doing, they acted in conformity with the decision of the Court, bound as they were, to give effect to it by the exclusion of material declared inadmissible. They confined their inquiry to the remaining material before them, that is, the confidential reports and personal files of the candidates. In effect, they proceeded to re-assess, with the exception of the inadmissible recommendation of the departmental head, the self same material they had taken into account in arriving at the annulled decision. Notwithstanding the decision of the Court on the effect of such material, particularly the fact that by the application of the statutory norm of suitability—merit, qualifications and seniority—the interested parties did not qualify as more suitable for promotion compared to the applicant, the respondents repeated the annulled decision in evident disregard of the findings of the Court.

We are not here concerned with the soundness of the finding of the Court, in the first case, but with the existence of the finding and its impact upon reconsideration of the matter by the Public Service Commission. Judgments of Courts of revisional jurisdiction are, in accordance with para. 5 of Article 146, binding upon all organs and authorities of the Republic. The implications of the aforementioned article of the Constitution were examined by the Full Bench in *Pieris* v. *The Republic* (1983) 3 C.L.R. 1054, 1064-1067; it introduces the doctrine of res judicata in the spirit it finds expression in other countries practising administrative law as a separate jurisdiction and

has many similar features to the doctrine of res judicata in the form it is encountered in civil law.

Every finding of a Court of revisional jurisdiction upon which the judgment is founded, which, may appropriately be termed an operative finding, is binding upon the Administration, no longer at liberty to take a contrary view of a given set of facts. They are required to act upon the findings premised by the judgment, unless new facts surface in the course of a fresh inquiry that cast a different complexion on the factual situation. Upon re-examination of a case, the Administration is precluded from making a different assessment of the facts covered by an operative finding unless they conduct a fresh inquiry and new facts emerge in the context thereof justifying such reassessment. A good illustration of the binding effect of operative findings is afforded by the case of *Karageorghis* v. *Republic* (1983) 3 C.L.R. 1211, declaring unsustainable a new decision repetitive of an annulled one taken in disregard of the operative findings of the Court.

Apart from operative findings that must be heeded by the Administration as a condition for remedying the illegality of earlier action, other judicial pronouncements bearing on the evidential value of material before the Administration must also be noticed and be given effect to, unless special reasons minuted in the decision otherwise justify. The point is aptly made, if I may say so with respect, in the judgment of A. Loizou, J., in *Constantinou* v. *CY.T.A.* (1972) 3 C.L.R. 116. The learned Judge ruled that peripheral judicial pronouncements should nonetheless exercise decisive influence upon the appointing body charged with re-examination of a case; departure therefrom must be specially reasoned in the decision itself.

The underlying principle appears to be that judicial pronouncements, irrespective of their precise juridical effect, should be duly observed by the Administration as a potent force for ensuring sound administration. They should not be lightly by-passed as seems to have been the case here.

In the light of the above analysis of the implications of the decision of the Public Service Commission and its conflict with the operative findings of the Court, I am constitutionally bound to declare the sub judice decision invalid for breach

of the provisions of Article 146.5. Even if the pertinent findings were not operative, in the sense explained, I would again be compelled to annul the decision for failure to reason departure from the view taken by the Court of the material facts of the case.

The remaining objections to the validity of the decision going to its retrospectivity, the abolition of the post and its replacement with a new one in the context of the re-organization effected by Law 45/80, are less cogent and I remain unpersuaded about their soundness. In view of the outcome of the case, I consider it unnecessary to discuss them in any detail. Further, I shall refrain from pronouncing on the submission that aside from the decision of the Court in the first case the applicant was strikingly superior to the interested parties for this issue is bound up with the assessment of the facts made by the trial Court in the first action. Therefore, I consider it imprudent to go into the matter at all.

For the reasons indicated above, the recourse succeeds. The sub judice decision is annulled. Let there be no order as to costs.

Sub judice decision annulled.
No order as to costs.