

1984 April 26

[TRIANTAFYLLIDES, P., L. LOIZOU, HADJIANASTASSIOU, MALACHTOS,
DEMETRIADES, LORIS. JJ.]

SAVVAS PETRIDES,

Appellant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(*Revisional Jurisdiction Appeal No. 288*).

*Administrative Law—Administrative acts or decisions—Judicial control
—Principles applicable.*

5 *Public Officers—Appointments and promotions—Appointment to post
of Assistant Cultural Officer in the Ministry of Education—Sub
judice decision reasonably open to the respondents.*

10 This was an appeal against a first instance judgment* by means
of which appellant's recourse impugning the decision of the
respondent Commission to appoint the interested party, to the
temporary post of Assistant Cultural Officer in the Ministry of
Education was dismissed.

15 *Held, after stating the principles governing judicial control of
administrative acts - vide pp. 348-349 post, that the trial Judge held
that it was reasonably open to the respondent Commission to
reach the decision they actually did and nothing that has been
said before this Court justifies a departure from the view taken
by the trial Judge; accordingly the appeal must fail.*

Appeal dismissed.

Cases referred to:

20 *Papapetrou v. Republic*, 2 R.S.C.C.61 at p. 69;
Petsas v. Republic, 3 R.S.C.C. 60;
Republic v. Aivaliotis (1971) 3 C.L.R. 89;

* The judgment is reported in (1982) 3 C.L.R. 914.

- Paraskevopoullou v. Republic* (1971) 3 C.L.R. 426;
Pierides v. C.B.C. (1982) 3 C.L.R. 149;
Lambrakis v. Republic (1973) 3 C.L.R. 29;
Linou-Flassou-Petra Co. Ltd. v. Republic (1976) 3 C.L.R. 25;
Georghiades v. Republic (1982) 3 C.L.R. 659 at p. 682; 5
Pikis v. Republic (1965) 3 C.L.R. 131 at p. 149;
Coussoumides v. Republic (1966) 3 C.L.R. 1.

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (A. Loizou, J.) given on the 4th September, 1982 (Revisional Jurisdiction Cases Nos. 301/79 and 321/79)* whereby appellant's recourse against the appointment of the interested parties to the post of Assistant Cultural Officer in the Ministry of Education in preference and instead of the applicant was dismissed. 10 15

A. S. Angelides, for the appellant.

G. Constantinou, Counsel of the Republic, for the respondent.

E. Odysseos, for the interested party.

Cur. adv. vult. 20

TRIANTAFYLIDIS P.: The judgment of this Court will be delivered by Mr. Justice Loris.

LORIS J: This is an appeal from a first instance judgment (reported in (1982) 3 C.L.R. 914) of a Judge of this Court, by means of which two recourses, (Cases Nos. 301/79 and 321/79 - heard together), impugning the decision of the respondent Commission to appoint the interested party, namely Eleni Nikita, to the temporary post of Assistant Cultural Officer in the Ministry of Education, in preference and instead of the applicants were dismissed; the present appeal was filed by applicant in Case No. 301/79 only. 25 30

Before proceeding with the salient facts of the case under consideration, as they emerge from the judgment of the trial Judge, it must be stressed that by means of the present appeal only that part of the judgment is being impugned which refers to Case No. 35

* Reported in (1982) 3 C.L.R. 914.

301/79 as no appeal was filed by applicant in Case No. 321/79 together with which the former case was heard; we shall, therefore, confine ourselves in depicting from the aforesaid judgment the salient facts relevant to the present appeal.

5 The relevant part of the judgment under appeal reads as follows:-

10 “This post, according to the relevant scheme of service, is a first entry post and the qualifications required include a degree or title of a University or Polytechnic or a Higher School of Art; good knowledge of at least one of the prevailing European Languages; and post-graduate training abroad and/or study visits abroad, as an additional qualification. The vacancy in question was advertised and 24 applications were made in response thereto.

15 The respondent Commission, then at its meetings of the 16th December 1978, and 20th January, 1979, decided that nine candidates, including the applicants and the interested party be invited for interview on the 22nd January, 1979. The Cultural Officer of the Ministry of Education was present at this meeting as the Director-General of the Ministry was absent abroad”.

20 In the minutes of this meeting of the respondent Commission, (enclosure 7 of the bundle of documents attached to the opposition), it is inter alia stated:

25 “The Commission as well as the Representative of the Ministry of Education put several questions to all the candidates on matters of General knowledge and on matters connected with the duties of the post as shown in the relevant scheme of service.

30 The Commission considered the merits, qualifications and experience of the candidates interviewed as well as their performance during the interview (personality, alertness of mind, general intelligence and the correctness of answers to questions put to them etc.).

35 The Personal Files and the Annual Confidential Reports of the candidates already in the service were also taken into consideration.”

“From the candidates interviewed, the Commission observed that Mrs. Eleni S. Nikita gave very satisfactory replies to questions put to her and generally she proved to be the best candidate for appointment to the above post.

The Representative of the Ministry of Education stated that Mrs. Eleni S. Nikita had been working under him for some time, her services had been very satisfactory and that he considered her very suitable for the post of Assistant Cultural Officer. 5

According to the relevant scheme of service, candidates for appointment to the post of Assistant Cultural Officer must possess ‘a good knowledge of one of the prevailing European languages’. The Commission observed that Mrs. Eleni S. Nikita had studied French and was serving as a Secondary School Teacher for the French language as from 1971. In view of the above, the Commission was satisfied that the candidate in question did possess ‘a good knowledge of French - i.e. one of the prevailing European languages.’ 10 15

After considering the above and after taking into consideration all the facts appertaining to each one of the candidates interviewed and after giving proper weight to the merits, qualifications, abilities and experience of these candidates, as well as to their suitability for appointment to the above post as shown at the interview, the Commission came to the conclusion that Mrs. Eleni S. Nikita was on the whole the best. The Commission accordingly decided that Mrs. Eleni S. Nikita be appointed to the temporary (Dev.) post of Assistant Cultural Officer w.e.f. 1.4.1979”. 20 25

The main grounds on which the recourse was contested were: 30

- (a) the relevant Scheme of Service and the evaluation of the qualifications of the applicant and the interested party
- (b) the alleged failure of the P.S.C. to carry out due inquiry as well as their alleged failure to supply special reasoning as provided in the case of *Tourpekki v. The Republic* (1973) 3 C.L.R. 593. 35
- (c) the alleged “undue importance attached to the re-

commendations of Mr. Serghis", under whom the interested party was serving on secondment before her appointment

5 (d) the alleged "misconception of fact" in that the personal files of the appellant-applicant were not in fact before the Respondent Commission contrary to what is stated in the minutes of the meeting of the P.S.C. held on 22.1.79 (appendix 7)

10 (e) the alleged failure of the respondent Commission to select the most suitable candidate.

As regards ground (a) the learned trial judge after dealing in his judgment with the career and qualifications of the appellant-applicant and the interested party concluded on this subject as follows:

15 "It is clear from the material before me that the respondent Commission interpreted and applied the relevant Scheme of Service in a proper manner and evaluated correctly the qualifications of the applicant(s) and the interested party along with those of all other candidates having duly
20 inquired into the matter....".

In connection with "Schemes of Service" it was laid down as early as 1961 by the then Supreme Constitutional Court in the case of *Papapetrou v. The Republic*, 2 R.S.C.C. 61 at p. 69 that

25 ".....in deciding whether or not the Public Service Commission in a given case has conformed with the relevant scheme of service the Court will not give to such scheme a different interpretation other than that given to it by the Public Service Commission provided that such inter-
30 pretation was reasonably open to it on the basis of the wording of the scheme in question".

The above principle was reiterated in a number of cases subsequently, such as *Petsas v. The Republic*, 3 R.S.C.C. 60 and more recently in the *Republic v. Aivaliotis* (1971) 3 C.L.R. 89, *Paraskevopoullou v. The Republic* (1971) 3 C.L.R. 426, *Pierides v. C.B.C.* (1972) 3 C.L.R. 149, *Lambrakis v. Republic* (1973) 3 C.L.R. 29.

Dealing with ground (b) above the learned trial Judge after

dealing with the matter extensively concludes as hereinbelow stated:

“In any event when the respondent Commission speaks of having considered the qualifications of all candidates, must be taken to have considered them as against the totality of the requirements of the Scheme of Service in relation to each of them and his qualifications. Once therefore, this additional qualification was part of those required under the Scheme of Service, and the respondent Commission stated that it had inquired into them, it cannot be validly argued that the matter was not duly inquired into and considered by the respondent Commission. There is, on the contrary nothing to suggest that they omitted to examine same.

The case therefore of *Tourpekki* (supra) is distinguishable as in that case the applicant appeared to possess a qualification which might be considered under the relevant scheme, an additional advantage, which was not possessed by the interested party chosen in her stead and no reasons were given for so ignoring such an advantage. No doubt in the present case, the Commission carried out a due inquire and gave sufficient reasons on the subject”.

With reference to the presence and recommendations of Mr. Serghis (ground (c)) the trial Court had this to say inter alia:

“Mr. Serghis was present there in the place of the Director-General of the Ministry of Education, who was on that day absent abroad and therefore unable to attend and his presence in addition was justified under section 18 of the Public Service Law, 1967, which provides inter alia that ‘The Commission may require...any public officer to attend and...assist the Commission concerning any matter which the Commission is required to consider in the exercise of its function...’ In fact as stated in the relevant minutes he assisted the respondent Commission at the interviews by putting also himself, together with the Commission, several questions to all the candidates on matters of general knowledge and on matters connected with the duties of the post, as shown in the relevant Scheme of Service. He then supplied the information already referred to and gave his opinion to her suitability for the post...”.

Regarding ground (d) above the learned trial Judge after examining the evidence before him found

5 “..... no reason to question the accuracy of the statement of the respondent Commission in its minutes to the effect that the personal files and confidential reports of all the candidates were before it”.

Dismissing ground (e) the Court concluded

10 “.....The subject decision was reasonably open to the respondent Commission which has exercised its relevant discretionary powers within the proper limits for the purpose, and in arriving at the subject decision there has been neither a misconception of law nor of fact, nor any abuse or excess of power, moreover, it was reached after a due and proper inquiry and it is duly reasoned”.

15 Thus the learned trial Judge dismissed the recourse of the applicant who filed the present appeal challenging the first instance judgment on the same five grounds raised in his recourse raising at the same time an additional one (ground 6 in the present appeal) notably a complaint to the effect that the trial
20 Court failed to pronounce on the repercussions of the judicial annulment of the appointment of Elli Constantinou and the consequential revocation of her permanent appointment the appointment which allegedly resulted in the vacancy which was filled in by the appointment of the interested party.

25 We intend to deal first with ground 6 of the present appeal on which learned counsel for appellant devoted considerable time of his address and commenced same with this ground.

In examining this ground we have noted that this issue was raised and argued before the trial Judge (vide on this point
30 *Linou-Flasou-Petra Co. Ltd. v. Republic* (1976) 3 C.L.R. 25) although we must say that it was raised at somewhat late stage i.e. in the written reply of learned counsel for appellants and it was not fully argued therein.

35 The facts on which counsel for appellant based his submission were limited by him to the following:

On 22.1.1979 the P.S.C. promoted Elli Constantinou to the permanent post of Assistant Cultural Officer in the Ministry of

Education from the relevant temporary post she was holding at the time; as a result the Commission proceeded to appoint the interested party in the recourse under the present appeal to the temporary post of Assistant Cultural Officer in the vacancy which occurred as a result of the aforesaid promotion of Elli Constantinou. 5

On 16.12.1980 the appointment of Elli Constantinou in the temporary post of Assistant Cultural Officer w.e.f. 1.3.1978, was annulled by the Court (vide Recourse No. 225/78-R.A. No. 243; judgment on appeal delivered on 11.4.1984—still unreported).* 10

It is the submission of learned counsel for the appellant in the present appeal that as the temporary appointment of Elli Constantinou w.e.f. 1.3.1978 was annulled by the Court on 16.12.1980 and as her appointment in the post of permanent Assistant Cultural Officer was revoked, there was no such temporary post vacant on 22.1.1979 when the interested party in this case was appointed and therefore the appointment of the interested party namely Eleni Nitita should be annulled “par voie de consequence”. 15 20

First of all there is no prayer in the recourse under appeal for the annulment of the appointment of the interested party based on this ground. This issue was raised “en passant” at a late stage as already referred to above and perhaps this is one of the reasons why the learned trial Judge omitted to refer to this issue in his judgment. 25

But the most important matter to be considered on this issue is the incomplete factual substratum on which the submission of counsel is based. A careful perusal of the record reveals that Elli Constantinou after the annulment by the Court of her temporary appointment and the revocation of her permanent one reverted to her previous status of Schoolmistress in the Educational Service. (Vide affidavit of 5.6.1982 at page 61 of the record) and not to the temporary post of Assistant Cultural Officer which was vacant at all material times. 30 35

From the above it is clear that the submission of counsel for appellant on this issue is untenable; therefore ground of appeal No. 6 fails.

* Reported in (1984) 3 C.L.R. 378.

Reverting now to the remaining grounds of appeal it is useful to remind the scope and compass of the jurisdiction under Article 146 as summarised by my brother judge Pikis in delivering the judgment of the Full Bench in the case of *Georghiades v. The Republic* (1982) 3 C.L.R. 659 at p. 668:

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“The review and the inquiry it entails is limited to the validity of the act impeached. Such validity is tested by reference to the powers vested by law in the administration, the manner of their exercise and the factual substratum, particularly its correctness. The revisional jurisdiction of the Supreme Court is primarily of a corrective character. It is aimed to ensure, in the interest of legality and public good, that the administration functions within the sphere of its authority and always subject to the principles of good administration. The Court will not assume administrative responsibilities, a course impermissible under a system of separation of State powers, constitutionally entrenched in Cyprus. It is appropriate to recall in this respect, the observations of Triantafyllides, J., as he then was in *Costas M. Pikis v. The Republic* (1965) 3 C.L.R. 131, at 149, earmarking the powers of the executive and the judiciary: ‘After all it must not be lost sight of that it is for the Government to govern and for the Court only to control.....’.

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The power of the Supreme Court is limited, as indicated, to the scrutiny of the legality of the action, and to ascertain whether the administration has exceeded the outer limits of its powers. Provided they confine their action within the ambit of their power, an organ of public administration remains the arbiter of the decision necessary to give effect to the law; and so long as they make a correct assessment of the factual background and act in accordance with the notions of sound administration, their decision will not be faulted. In the end, the Courts must sustain their decision if it was reasonably open to them”.

And it is well settled that the initial burden of establishing that the decision complained of is vulnerable to be set aside is upon the party propounding its invalidity (*Coussoumides v. The Republic* (1966) 3 C.L.R. 1).

In the present case the learned trial Judge held that it was reasonably open to the respondent Commission to reach the decision they actually did and nothing that has been said before us justifies a departure from the view taken by the trial Judge.

In our judgment the decision taken by the P.S.C. was reasonably open to them as the trial Judge held at first instance; therefore the present appeal fails and it is accordingly dismissed. Having given the matter our best consideration we have decided not to make any order as to costs. 5

Appeal dismissed with no order as to costs. 10