

1985 June 3

[TRIANTAFYLLIDES, P., A. LOIZOU, SAVVIDES, LORIS
AND STYLIANIDES, JJ.]

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

Appellants,

v.

NICOS MYLONAS,

Respondent.

(Revisional Jurisdiction Appeal No. 418).

Public Service—Acting appointments—Object of—To remedy a temporary necessity—Section 42 of Law 33/67—Can only apply for an acting appointment of a foreseeable temporary duration—In case of an acting appointment, no question of selection of best candidate arises.

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The Public Service Law 33/67 ss. 42, 32(1) and 47.

This appeal is directed against the judgment of a Judge of the Supreme Court whereby he annulled the acting appointment of the interested party to the post of Assistant Director-General at the office of the House of Representatives, on the ground that the appellant Commission misconceived its powers under s. 42 of the Public Service Law 33/67* and abdicated its duty to select the best candidate as it simply appointed the officer recommended by the President of the House.

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The office in question is a permanent one provided in the Services and Personnel of the House of Representa-

* Section 42 of Law 33/67 is quoted at p. 1611 post.

5 tives Law 24/61. The post was held by a Turkish Cypriot until the events of December, 1963. It remained vacant ever since. The House continued to function without initiative from the appropriate authority to fill this vacant post.

On 1.12.83 the President of the House requested the Public Service Commission to appoint the interested party to act in that office in addition to the duties of his substantive post.

10 The Commission having considered that the post was vacant and that the interested party possessed the required qualification acceded to the said request by the President of the House and made the appointment under section 42 of Law 33/67.

15 *Held*, (1) The object of an acting appointment is to remedy a temporary necessity. The provisions of section 42 of Law 33/67 may be used only for an acting appointment of a foreseeable temporary duration in order to remedy a necessity until in the foreseeable near future either
20 the holder of the post resumes his duties or the vacant post is otherwise filled.

(2) The nature and scope of an acting appointment and the provision for "recommendation" in the above section, not only do not cast a duty on the Public Service Commission to make a selection but, on the contrary, it is impermissible for it to do so. Hence, no question of selection of the most suitable candidate arises. *Olymbios v. The Republic* (1974) 3 C.L.R. 17 and *Tsiropoulou v. The Republic* (1983) 3 C.L.R. 317 approved.

30 (3) *On the facts of the present case* it is obvious that the object of the acting appointment of the interested party was not to remedy a temporary necessity or to avoid unnecessary difficulties in the service for a foreseeable short duration. The sub judge appointment savours a secondment or an unorthodox way of a disguised filling of the
35 vacancy. The Public Service Commission misconceived section 42 and the nature of an acting appointment and the sub judge decision is the result of a wrongful application

of the Law. It is on this ground that it should have been annulled.

Appeal dismissed.
No order as to costs.

Cases referred to: 5

Olymbios v. The Republic (1974) 3 C.L.R. 17;

Tsiropoullou v. The Republic (1983) 3 C.L.R. 317;

Phylactou v. The Republic (1973) 3 C.L.R. 444;

Tourpeki v. The Republic (1983) 3 C.L.R. 592.

Appeal. 10

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Pikis, J.) given on the 12th October, 1984 (Revisional Jurisdiction Case No. 150/83)* whereby the acting appointment of the interested party to the post of Assistant Director-General at the Office of the House of Representatives was annulled. 15

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

Chr. Triantafyllides with *Chr. Demetriou (Mrs.)*, for the respondent. 20

Cur. adv. vult.

TRIANTAFYLLIDES P.: The judgment of the Court will be delivered by Mr. Justice Stylianides.

STYLIANIDES J.: This appeal is directed against the judgment of a Judge of this Court whereby he annulled the acting appointment of the interested party to the post of Assistant Director-General at the office of the House of Representatives. 25

The ground for the annulment was that the appellant Commission misconceived its powers under s. 42 of the Public Service Law, 1967 (Law No. 33 of 67) and abdicated its duty to select the candidate best suited to act as 30

* Reported in (1984) 3 C.L.R. 1094.

Assistant Director-General in the sense that it did not make a selection but simply appointed the officer recommended by the President of the House.

5 The office of the Assistant Director-General is a permanent one and is provided in the Services and Personnel of the House of Representatives Law, 1961 (Law No. 24 of 61). That post was held by a Turkish Cypriot until the events of December, 1963, when the Turkish Cypriot civil servants withdrew from their offices. It remained vacant
10 ever since and the House continued to function without initiative from the appropriate authority to fill this vacant post.

On 1.2.83 the President of the House, Mr. Ladas, by letter requested the Public Service Commission to appoint
15 the interested party to act in that office in addition to his duties as Head of Services of the Parliamentary Committees. He informed the Commission that the post was vacant and that the interested party possessed the qualifications required.

20 The Public Service Commission in response to the aforesaid request at their meeting of 5.2.83, having considered that the post was vacant and that the interested party possessed the required qualifications and was, according to the request of the President of the House, a suitable person
25 to perform the duties of the post, they appointed him to act as Assistant Director-General of the House of Representatives in addition to the duties of his substantive post with effect from 1.2.83.

30 This appointment was effected under s. 42 of Law No. 33/67 which governs acting appointments. It reads:-

“(1) When an office is vacant for any reason or its holder is absent on leave, or incapacitated, another person may be appointed to act in that office under such terms as may be prescribed.

35 (2) An acting appointment shall be made on the recommendation of the appropriate authority concerned.”

The provisions of this section with regard to recommendation were judicially considered by Malachos, J., in *Andreas Olymbios v. The Republic*, (1974) 3 C.L.R. 17, and by Savvides, J., in *Tsiropoullou v. The Republic*, (1983) 3 C.L.R. 317. *Malachos, J.*, at p. 27 said:-

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“Under Section 42, Subsection 2, an acting appointment shall be made on the recommendation of the appropriate authority concerned. From the wording of this subsection it is clear that once the appropriate authority recommends any person who is possessed with the necessary qualifications for the post, the Public Service Commission is bound to make such appointment and cannot invite applications from other persons in order to make a selection. There is no power under Section 42 for the Commission to take that course”.

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This opinion was adopted by Savvides, J., in *Tsiropoullou* case—(See p. 319)—where he added that:-

“...It is also clear that the term ‘recommendation’ does not refer only to the act of recommendation but refers also to the person so recommended”.

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The object of an acting appointment, as emerging from the wording of this section, is to remedy a temporary necessity and avoid unnecessary difficulties so that the smooth running of the public service as a result of the vacancy created in the relative post will continue. An acting appointment may be made when the office is vacant for any reason or the holder is absent on leave or incapacitated,

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Leave of absence and incapacitation are, as of their nature, of a foreseeable temporary duration. The vacancy of an office again, even for a short duration, may cause some difficulty in the proper functioning of the service to the detriment of the service and of the people of the country whom civil servants are intended to serve. It is, therefore, our opinion that the provisions of this section may be used only for an acting appointment of a foreseeable temporary duration in order to remedy a necessity until in the fore-

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seeable near future either the holder of the post resumes his duties or the vacant post is otherwise filled.

5 The nature and scope of an acting appointment and the provision for "recommendation", as construed in the cases of *Olymbios* and *Tsiropoullou* (supra), with which we are in full agreement, not only do not cast a duty on the Public Service Commission to make a selection but, on the contrary, it is impermissible for the Commission to do so. Hence, no question of selection of the most suitable candidate arises.

10 A vacant post of a permanent office may be filled in one of the methods set out in s. 32(1). In case of nonfilling of a post another officer may be seconded for an indefinite duration under s. 47. A permanent officer may be seconded temporarily to perform the functions of a vacant post under s. 47.

15 We feel that it is unnecessary to deal with the nature and effect of secondment. It suffices to refer to the cases of *Phylactou v. The Republic*, (1973) 3 C.L.R. 444, and *Tourpeki v. The Republic*, (1973) 3 C.L.R. 592.

20 In the present case the post of Assistant Director-General at the office of the House of Representatives was vacant for 20 years. The office of the House was functioning without any apparent hindrance and there was no request during that score of years for the filling of the vacancy. There is no indication from the material before us that the appropriate authority requested or envisages the filling of this post. Neither the request of the President of the House nor the decision of the appellant Commission intended to remedy a temporary necessity or to avoid unnecessary difficulties in the service for a foreseeable short duration. The sub judge acting appointment does not appear to be of a foreseeable temporary duration. It savours either a secondment or an unorthodox way of a disguised filling of the vacancy.

35 The sub judge decision is challenged in the recourse as made contrary to Law. We are of the view that the appellant Commission misconceived s. 42 and the nature of an acting appointment, and the sub judge decision is the

result of wrongful application of the Law. It should have been annulled for this ground.

In view of the aforesaid we sustain the result of the recourse and we dismiss the appeal.

Let there be no order as to costs.

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*Appeal dismissed with
no order as to costs.*