

1985 October 18

[LORIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

NELLI PSARA-KRONIDOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE EDUCATIONAL SERVICE COMMISSION,
2. THE COUNCIL OF MINISTERS,

Respondents.

(Case No. 442/83).

The Public Educational Service Law 10/69 s.76—The Educational Officers (Teaching Staff) (Emplacements, Transfers, Promotions and Related Matters) Regulations, 1972 as amended—Reg. 10(2) of the said Regulations—Appointment on contract of 9 interested parties in preference to and instead of the applicant who had priority over them on the relevant list—Contrary to reg. 10(2)—Sub judice decision annulled. 5

The Educational Service Commission in preparing the list for the year 1983 envisaged by regulation 5 of the Educational Officers (Teaching Staff) (Emplacements, Transfers, Promotions and Related Matters) Regulations, 1972 as amended emplaced the applicant as No. 4 of the list. 10

On 12.9.1983 the E.S.C. appointed on contract from 12.9.1983 up to 31.8.1984 in the post of School-Mistress in Domestic Science the nine interested parties in preference to and instead of the applicant who had priority over them on the said list, thus defying reg. 10(2) of the said Regulations. 15 20

Counsel for the respondents in an attempt to save the

decision invoked grounds of unconstitutionality of the Regulations to which he has added "unreasonableness" allegedly rendering them ultra vires the enabling Law.

5 *Held*, annulling the sub judge decision, the Regulations in question are in effect legislation of a delegated nature and were made by the competent organ, i. e. the Council of Ministers pursuant to the provisions of section 76 of The Public Educational Service Law 10/69; such legislation has to be complied with until it is repealed by the
10 Council of Ministers or until it is found to be "Ultra Vires" the enabling law by a Judicial decision. In reaching the sub judge decision the E.S.C. acted contrary to the Regulations, abusing its powers.

15 *Sub judge decision annulled.*
No order as to costs.

Cases referred to:

Kapsou v. The Republic (1983) 3 C.L.R. 1336.

Recourse.

20 Recourse against the decision of the respondents to appoint on contract the interested parties in the post of Schoolmistress for Domestic Science in preference and instead of the applicant.

A. S. Angelides, for the applicant.

D. Papadopoulou (Mrs.), for the respondents.

25 *Chr. Triantafyllides*, for the interested parties.

Cur. adv. vult.

30 LORIS J. read the following judgment. A single question poses for determination in the present recourse: Could the respondent E.S.C. appoint on contract, the nine interested parties in the present recourse, in the post of Schoolmistress for Domestic Science, in preference to and instead of the applicant, who had priority over them according to the relevant list, prepared by the respondent Commission pursuant to the provisions of the Educational Officers

(Teaching staff) (Emplacements Transfers, Promotions and Related Matters) Regulations, 1972 as amended?

The facts of the present case are very briefly as follows:

The applicant is a graduate of "Harokopios School" of Athens; she obtained her diploma in Domestic Science in 1960 and ever since July 1960 she was appointed as School-mistress in Domestic Science in the Commercial Lyceum of Famagusta, where she served up to 1965 when she resigned. 5 10

In April 1980 she submitted an application for re-appointment to the respondent Commission and she was emplaced on the list prepared by them (for those to be appointed as School-mistresses of Domestic Science) under No. 51 and as a result she was not re-appointed. 15

Applicant on 26.8.82 submitted a written protest (which appears in the file) to the E.S.C. for the number she was given on emplacement to the list, and on 10.9.82 she received a reply (which is also in the file) from the E.S.C. whereby it is stated inter alia that her emplacement will "substantially improve" in the list to be prepared for the year 1983. 20

The E.S.C. in preparing the list envisaged by regulation 5 of the Educational Officers (Teaching Staff) (Emplacements, Transfers, Promotions and Related Matters) Regulations, 1972, as amended, emplaced the applicant under No. 4 of the list; it is common ground that all interested parties were emplaced on the list in subsequent order than the applicant. In spite of this fact the E.S.C. on 12.9.83 appointed on contract (from 12.9.83 up to 31.8.84) in the post of School-mistress in Domestic Science all nine interested parties in preference to and instead of the applicant who had priority over them on the list, thus defying regulation 10(2) of the Educational Officers etc. Regulations 1972 the relevant part of which reads as follows: 25 30 35

«10.(2) Οι επί συμβάσει διορισμοί διενεργούνται εκ τῶν οίκελων πινάκων διοριστέων κατὰ σειράν προτεραιότητος...».

“10. (2) Appointments on contract are made in order of priority from the relevant lists of persons to be appointed.”).

5 The respondent E.S.C. admits having acted contrary to the said Regulations in reaching at the sub judge decision and in an attempt to save the decision in question invokes grounds of unconstitutionality of the Regulations to which learned counsel for respondents has added “unreasonableness” allegedly rendering the Regulations in question “ultra vires” the enabling Law.
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I hold the view that the respondent Commission could not disregard the Regulations in question which have never been repealed or declared unconstitutional or “ultra vires” the enabling Law. These regulations are in effect legislation
15 of a delegated nature enacted by the Council of Ministers pursuant to the provisions of s. 76 of the Public Educational Service Law of 1969 (Law 10/69) and as stated by the learned President of this Court in the case of *Kapsou v. The Republic* (1983) 3 C.L.R. 1336 at p. 1341 “Once
20 such legislation was made by the competent organ, in this case by the Council of Ministers such legislation has to be complied with until it is repealed by the Council of Ministers... or until it is found to be ‘Ultra vires’ by a
25 judicial decision (see in this respect, inter alia, Tsoutsos on the Administration and the Law (1979) pp. 41, 88, 89, 99, 116, Manual of Administrative Law by Spiliotopoulos (1977) p. 79 et. seq., and Delikostopoulos on Administrative Law Vol. A (1972) p. 47 et seq.)”

30 Thus the respondent E.S.C. in reaching at the sub judge decision acted contrary to the Regulations abusing its powers and therefore the said decision has to be annulled.

In the result the sub judge decision is hereby annulled; it is with great reluctance that I have decided to make no order as to costs hereof.

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*Sub judge decision annulled.
No order as to costs.*