

1985 November 7

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

THOULLA ADAMIDOU,

Applicant.

v.

THE CYPRUS BROADCASTING CORPORATION,
THROUGH THE ADMINISTRATIVE BOARD OF
THE CORPORATION,

Respondent.

(Case No. 168/84).

Administrative Law—Collective agreement between a public corporation and the Trade Union of its employees—Such agreement has not the force of law and unless adopted by the Regulations its provisions have no application in administrative law.

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Cyprus Broadcasting Corporation—Scheme of service—Promotions of officers not qualified thereunder—Promotions unlawful, notwithstanding a provision in a collective agreement between C.B.C. and the Trade Unions of its employees, empowering C.B.C. to effect such a promotion on account of "satisfactory service".

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The applicant challenges the decisions of the respondents to appoint interested parties L. Ioannou and S. Parikian to the post of Accounting Officer B.

On 2.11.83 an agreement was reached between the C.B.C. and the Trade Unions of its employees to the effect that the L.C.C. (London Chamber of Commerce) Higher in Accounting should be specifically required as a qualification for the said post. It was further agreed that the Corporation would have power to appoint persons

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not possessing such qualification either in vacant or super-numerary posts on account of satisfactory service.

5 On 14.11.83 the Administrative Board of C.B.C. approved a new scheme of service for the said post which provides as follows:

"Qualifications required.

University title or diploma with specialisation in accounting

or

10 (a) secondary school leaving certificate. Good knowledge of the Greek and English language. Integrity of character.

15 (b) Higher Accounting examination of the London Chamber of Commerce or any other equivalent examination.

(c) Ability to type in Greek and English with a speed of at least 35 w.p.m.

and

20 long and satisfactory service in the Accounting Department of the Corporation or in similar duties".

Neither the applicant nor the interested parties possessed the said special qualification of L.C.C. Higher in Accounting.

25 On 22.12.83 the Board of C.B.C., having appointed to the four vacant at the time posts of Accounting Officer B four candidates, who possessed the said qualification, proceeded to consider the question of appointment to super-numerary posts of candidates qualified on the ground of satisfactory service but not possessing the L.C.C. Higher in Accounting. As a result the two interested parties were
30 appointed. Hence the present recourse.

Held, annulling the sub judice decision:

(1) Collective agreements between Public Corporations

and the Trade Unions of its employees lack the force of law and unless adopted as part of the regulations they have no application in administrative law. In this case the relevant part of the collective agreement has neither been adopted as part of the Regulations nor included in the relevant scheme of service. 5

(2) Since there is no other legal provision permitting the appointment or promotion to vacant or supernumerary posts of officers not possessing the qualifications required by the scheme of service, the sub judice decision was unlawful. 10

*Sub judice decision annulled.
Order for £50.- costs in favour of applicant.*

Cases referred to: 15

Kontemeniotis v. C.B.C (1982) 3 C.L.R. 1027;

Fanis v. C.B.C (1985) 3 C.L.R. 775.

Recourse.

Recourse against the decision of the respondent to appoint the interested parties to the post of Accounting Officer B in preference and instead of the applicant. 20

K. Talarides, for the applicant.

P. Polyviou, for the respondent.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicant in this case challenges the decision of the respondent published on 8.3.1984, by a circular of the General Manager of the Cyprus Broadcasting Corporation (C.B.C.) by which interested parties Lenia Ioannou and Siake Parikian were appointed to the post of Accounting Officer B. 25
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The applicant took employment with the C.B.C. in July, 1964 and on the 1st August, 1967, she was appointed to the post of Accounts Clerk, 2nd Grade and was promoted to Accounts Clerk 1st Grade on the 1st July, 1971. As

a result of the reorganisation of the Corporation and the abolition of the post of Accounts Clerk, the applicant was emplaced on the 1st July, 1983, to the post of Accounting Officer C.

5 The two interested parties were also holding, prior to the sub judice decision, the post of Accounting Officer C in the C.B.C. As a result of the reorganisation of the C.B.C. in 1981 certain vacancies in the post of Accounting Officer B were created and were advertised within the respondent
10 organisation on the 20th May, 1983. One of the interested parties that is, Lenia Ioannou, was amongst those who submitted applications for the post, whilst interested party Siake Parikian and the applicant did not submit one.

The Advisory Selection Committee of the Corporation
15 in its meeting of the 28th June, 1983, found that the said interested party did not possess the qualifications required by the scheme of service, specifically the L.C.C. Higher Accounting, and as result excluded her from the candidates called for an interview. Interested party Ioannou felt dis-
20 satisfied for her exclusion from the list of candidates eligible for the post and by letter of her advocate to the General Manager of the respondent protested against such decision contending that her qualifications satisfied the
25 scheme of service. The Board of the respondent in dealing with the matter came to the conclusion that there was an ambiguity concerning the validity of the decision of the Advisory Selection Committee on the question of construction of the scheme of service and decided to postpone taking a decision until the matter was clarified by its legal
30 advisers. As a result, the procedure for the filling of the post was suspended.

A dispute then arose between the Board of the respondent and the Trade Unions of the employees, which took the matter in their hands, insisting that the qualification of
35 L.C.C. Higher in Accounting should be specifically included in the schemes of service and negotiations started between the Trade Unions and the C.B.C. on the matter.

As a result, an agreement was reached on 2.11.1983 between the parties, by which the qualification of L.C.C.

Higher in Accounting was specifically required by the schemes of service for the post. It was also agreed that the corporation would have power, if it deemed proper to appoint persons not possessing such qualifications either in vacant or supernumerary posts, on account of satisfactory service. A new scheme of service was consequently prepared and approved by the Administrative Board of the C.B.C. on 14.11.1983 making express provision about the requirement of the L.C.C. Higher in Accounting. 5

I consider it appropriate to mention here that neither the applicant nor any of the interested parties possess the L.C.C. Higher in Accounting. Applicant and interested party Parikian possess the L.C.C. Intermediate in Accounting, whilst interested party Lenia Ioannou does not possess that either. 10

As a result of the new scheme of service the post was advertised once again on 15.11.1983 without any mention being made in such advertisement as to any supernumerary appointments or the qualifications required for such appointments. Seven applications were submitted, amongst which those of the applicant and the two interested parties. 15 20

The Advisory Selection Committee which met on the 7th and 15th December, 1983, found that the applicant and the two interested parties did not possess the required qualifications (the L.C.C. Higher in Accounting) and proceeded to interview the remaining four candidates possessing the above qualification, who were finally recommended for promotion. 25

The matter was then referred to the Board of the C.B.C. which, at its meeting of the 22nd December, 1983, first decided to appoint to the four vacant posts, the four candidates who were found by the Advisory Selection Committee to possess the required qualifications and then proceeded to consider the question of appointment in supernumerary posts, of candidates qualifying on the ground of satisfactory service but not possessing the special qualification of L.C.C. Higher in Accounting required by the scheme of service. 30 35

The minutes of the meeting in this respect, read as follows:

5 “The Board also considered the cases of Mrs. Lenia Ioannou and Miss Siake Parikian, Accounting Officers C. Notwithstanding the fact that these officers do not possess the Diploma in Higher Accounting of the London Chamber of Commerce, they have a long and satisfactory service in the Corporation (Mrs. Lenia Ioannou 28 years and Miss Siake Parikian 30 years).

10 The Board on the basis of provision No. 4 of the agreement between the Corporation and EVRIK, dated 2.11.83, decided to appoint them in supernumerary posts of Accounting Officer B, Scale A 8/9 as from 1.1.1984 without any readjustment of their incremental date. The said officers are on scale A 8 since 1.4.1983.

15 The appointment of the aforementioned officers to the post of Accounting Officer B was made on condition that within the probationary period of two years they will prove, after a relevant examination, that they are able to type”.

20 The above decision of the respondent was communicated to the applicant by means of a circular dated the 8th March, 1984, hence the present recourse.

Counsel for applicant argued the recourse on the grounds that:

25 (1) For the filling of the supernumerary posts, the respondent adopted a wrong and defective procedure. It failed to advertise the supernumerary posts and invite applications. No criteria were set down and the normal procedure through the Advisory Selection Committee was not followed.
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(2) The supernumerary appointments were not made in accordance with the requirements of the scheme of service, as the persons so appointed (the interested parties) did not possess the L.C.C. Higher in Accounting which is required
35 by the scheme of service for the post.

(3) The principle that the most suitable person must be selected for appointment or promotion was violated in that the respondent made no comparison between the persons

holding the post of Accounting Officer C and especially between the interested parties and the applicant who was superior to them in merit.

(4) Lastly, counsel contended that the respondent acted in abuse of its powers in reaching the sub judice decision. 5

Counsel for respondent submitted that the supernumerary appointments were made on the basis of the collective agreement between the respondent Corporation and the Trade Unions of its employees and that such appointments are not subject to the regulations and the procedure through the Advisory Committee. 10

The main issue in this case is whether the respondent was entitled to appoint and/or promote to the supernumerary posts persons not possessing the qualifications required by the scheme of service for the post. 15

In this respect, the scheme of service for the post of Accounting Officer B provides as follows:

“Qualifications required.

University title or diploma with specialisation in accounting 20

or

(a) secondary school leaving certificate. Good knowledge of the Greek and English language. Integrity of character.

(b) Higher Accounting examination of the London Chamber of Commerce or any other equivalent examination. 25

(c) Ability to type in Greek and English with a speed of at least 35 w.p.m.

and 30

long and satisfactory service in the Accounting Department of the Corporation or in similar duties.”

I shall deal first with the contention of counsel for respondent that the sub judice decision was taken in fur- 35

therance of the collective agreement of the 2nd November, 1983.

5 It has been held by this Court time and again that collective agreements between a public corporation and the Trade Unions of its employees lack the force of law and unless adopted as part of the Regulations of the public Corporation they have no application in administrative law. (See *Kontemeniotis v. C.B.C* (1982) 3 C.L.R. 1027).

10 It is not disputed in the present case that the relevant part of the said collective agreement has neither been adopted as part of the Regulations of the Corporation, nor included in the scheme of service for the post in question. It has also been submitted by counsel for the respondent that the same procedure has been followed in other cases
15 of supernumerary promotions. This, however, as it has been conceded by counsel, was made on the basis of a general note in the schemes of service for the particular posts.

The relevant part of the scheme of service in question in this case has been cited above, and there is no mention
20 that any officer may be promoted whether to a vacant or supernumerary post on account only of his or her long and satisfactory service. On the contrary, the requirement of long and satisfactory service is in addition to the requirements of a secondary school leaving certificate, the L.C.C.
25 Higher in Accounting and the ability to type both in Greek and English. If it was the intention of the respondent to appoint or promote either to vacant or supernumerary posts officers not possessing the required qualifications, only on account of their long and satisfactory service,
30 it should have clearly stated so in the scheme of service which forms the legal basis of promotions and has the force of law.

Since there is no other legal provision permitting the appointment or promotion to vacant or supernumerary posts
35 of officers not possessing the qualifications prescribed by the scheme of service, I must hold that the sub judice decision was unlawful and must, as a result, be annulled.

With regard to the question whether the usual procedure for normal appointments or promotions should also be fol-

lowed in the case of supernumerary appointments or promotions, it is my view that in the absence of any provision to the contrary, the same procedure should apply in all cases. Since, however, the validity of the Advisory Selection Committee has been questioned in the case of *Fanis v. The C.B.C.* (1985) 3 C.L.R. 775 and an appeal is still pending against the above judgment, I do not wish to make any finding on this issue. 5

Also, in view of my finding that supernumerary appointments should be subject to the scheme of service, and the fact that neither the applicant nor the interested parties possess the required qualifications I need not make any finding as to whether the applicant is superior to the interested parties and should have been preferred for appointment or promotion. 10 15

In the result this recourse succeeds and the sub judge decision is annulled, with £50.- costs in favour of the applicant.

*Sub judge decision annulled
with £50.- costs in favour of
applicant.* 20