

1985 November 23

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

CHRISTAKIS TRYFONOS,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF COMMUNICATIONS
AND WORKS AND/OR
THE DIRECTOR OF ELECTRICAL-MECHANICAL
SERVICES AND ANOTHER,

Respondents.

(Case No. 553/84).

5 *Public Officers—Transfer of, from one town to another—The Public Service Law 33/67 s. 48—By virtue of the provisions of said section competence for such transfer is the sole responsibility of the Public Service Commission—Therefore, the Director of the Department concerned in transferring the interested party, who was a temporary employee serving on contract, from Nicosia to Limassol exceeded his authority.*

10 *Administrative Law—Misconception of law and of fact.*

15 The applicant, Technician A in the Department of the Electrical-Mechanical Services of the Ministry of Communications and Works applied for his transfer from Nicosia to Limassol for personal reasons, the genuineness of which were never doubted. His application gained immediacy with the occurrence of a vacancy at Limassol Hospital for a technician to maintain hospital equipment. The need for the services of a technician at the Hospital was of a permanent character.

Notwithstanding the applicant's said application the

Director of the said Department transferred to Limassol the interested party, namely a temporary employee of the department, serving on a contractual basis.

The Public Service Commission dealt with the applicant's said application without proper information as to the permanent character of the needs of the said services at the Limassol Hospital and as to the status and circumstances of the transfer of the interested party to Limassol. The P.S.C. turned down applicant's application for transfer. 5

Held, annulling the sub judice decisions: 10

(1) The Director of Electrical-Mechanical Services in the Ministry of Communications and Works in transferring as aforesaid the interested party exceeded his powers, because under s. 48 of Law 33/67 competence for transfers is the sole responsibility of the Public Service Commission. 15

(2) Failure on the part of the respondent Commission to appreciate the above transgression of authority, as well as the absence of information as to the status and circumstances of employment of the interested party led them to examine applicant's request for transfer in the wrong factual and legal perspective. 20

Sub judice decisions annulled.

No order as to costs.

Observations: The Court has reservations whether the engagement of temporary personnel is, other than the fixing of the terms of employment, the responsibility of the administration. The ambit of s. 40 of Law 33/67 and its relationship to s. 32 have never been explored in a decided case. 25

Cases referred to: 30

Makrides and Another v. The Republic (1984) 3 C.L.R. 677;

Solomou v. The Republic (1984) 3 C.L.R. 533;

The Republic v. Louca and Others (1984) 3 C.L.R. 241.

Recourse.

Recourse against the decision of the first respondent to transfer the interested party from Nicosia to Limassol and against the refusal of the second respondents to transfer applicant from Nicosia to Limassol.

A. S. Angelides, for the applicant.

M. Tsiappa (Mrs.), for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. Important legal questions affecting the running of the public service must be resolved in order to adjudicate on the two motions raised in the recourse; for the annulment of-

- (a) the decision of the Director of the Department of the Electrical-Mechanical Services of the Ministry of Communications and Works, whereby the interested party was transferred to Limassol, and
- (b) the decision of the Public Service Commission turning down the request of applicant for transfer to Limassol.

The applicant, Technician A' in the aforesaid department, was anxious to be transferred from Nicosia to Limassol for personal reasons. The genuineness of his reasons and the strength they added to the request of the applicant was never doubted. His application was, as it is ordinarily the case, processed through the department to the Public Service Commission. It gained immediacy with the occurrence of a vacancy at Limassol Hospital for a technician to maintain hospital equipment. As counsel for the Republic informed the Court after further probing into the facts, the need for the services of a technician at the hospital is of a permanent character. Notwithstanding his application, the Director of the Electrical-Mechanical Services transferred to Limassol a temporary employee of the department, serving on a contractual basis (see blue 52 - exhibit 1). It is the case of the applicant the Director had no such right and that transgression of his authority prejudiced applicant's right to be himself considered for transfer to Limassol. Examination of the circumstances of the

employment of the interested party reveals, it appears to me, a somewhat disorderly situation (see, inter alia, blue 44 - exhibit 1). While he had been contractually engaged for service in Gas Prototypes (Πρότυπα Υγραερίου) at Nicosia, from 1.12.83 to 30.12.84, his duties were varied as from 16.6.84 when it was decided to train him with a view to assuming work in the maintenance of hospital equipment at Limassol. And, as a matter of fact, he was, after completion of his training, posted to Limassol with effect from 10.9.84. The questions raised by the applicant are firstly whether it was at all competent for the Director to effect this transfer; secondly, whether permanent needs of the service could be satisfied by the contractual engagement of temporary personnel.

The Public Service Commission dealt with the application of the applicant without proper information on the permanent character of the needs of the service for a technician at Limassol Hospital and the status and circumstances of transfer of the interested party to Limassol. The Commission assumed the transfer of the interested party to Limassol had been properly made in the exercise of powers vested in the Director, on the one hand, and that in consequence no vacancy existed, on the other. As counsel for the Republic acknowledged, they laboured under a misconception in relation to the above facts. To the extent that this misconception was material, their decision is obviously vulnerable to be set aside.

A less direct question relates to the power of an "appropriate authority" under the Public Service Law to employ on a contractual basis the services of personnel. Although unnecessary to give a concluded answer because of my decision on aspects of the case, directly in issue. I consider it proper to record my reservations whether the engagement of temporary personnel is, other than the fixing of the terms of employment, the responsibility of the Administration. It seems to me that by virtue of the provisions of s. 5 of Law 33/67, sole competence for the engagement of personnel vests in the Public Service Commission, an approach compatible with the constitutional framework for the appointment of personnel in the public service (Articles 122-

125 of the Constitution)¹. Under the Constitution, sole competence for the manning of the public service vests in the Public Service Commission. The ambit of the provisions of s. 40 has never been definitely explored in any decided case. Nor its relationship to the provisions of s. 32. It is unnecessary in this case to probe the matter further, in view of the absence of power on the part of an "appropriate authority" to effect transfers from one town to another. Competence for transfers is under the provisions of s. 48 of the Public Service Law the sole responsibility of the Public Service Commission. Consequently, the Director of the Department of Electromechanological Services exceeded his powers in transferring the interested party from Nicosia to Limassol. And his decision must, for that reason, be annulled. Failure on the part of the Public Service Commission to appreciate this transgression of authority, as well as the absence of proper information on the status and circumstances of employment of the interested party led them to examine the request of applicant for transfer to Limassol in the wrong factual and legal perspective.

For that reason their decision, too, must be annulled in order for them to reexamine the case in its proper perspective.

In the result, the two decisions challenged in these proceedings are annulled and I order accordingly. Let there be no order as to costs.

*Sub judice decisions annulled.
No order as to costs.*

¹ Makrides and Another v. The Republic (1984) 3 C.L.R. 677;
Solomou v. The Republic (1984) 3 C.L.R. 533;
The Republic v. Louca and Others (1984) 3 C.L.R. 241.