

1986 October 29

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

GEORGHIOS TH. GAVRIEL,

*Applicant.*

v.

THE ELECTRICITY AUTHORITY OF CYPRUS,

*Respondent.*

(Case No. 296/82).

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Public Corporations—Electricity Authority of Cyprus—Promo-  
tions—Joint Advisory Committee for Promotions and  
Regradings—Regulations relating to the said Committee  
invalid as they were neither approved by the Council of  
5 Ministers nor published in the Official Gazette—Final act  
of promotion invalid as taken under non-existent in Law  
Regulations.

The applications of the candidates for promotion to the  
post in question were first considered by the Joint Ad-  
10 visory Selection Committee for Promotions and Regradings.  
The Committee recommended the interested party. The  
Sub-Committee on Staff Matters decided to recommend  
the interested party and the respondent Authority, having  
considered, inter alia, the report of the said Sub-Com-  
15 mittee decided to promote the interested party to the post  
in question. As a result the applicant filed the present  
recourse.

*Held, annulling the sub judice decision, that as the*  
20 *Regulations* relating to the Joint Advisory Committee are  
invalid, as not having been approved by the Council of  
Ministers and as not having been published in the Official  
Gazette, the sub judice decision is null and void as taken

under non-existent in Law regulations (*Kofteros v. E.A.C.* (1985) 3 C.L.R. 394 followed).

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

**Cases referred to:**

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*Kofteros v. E.A.C.* (1985) 3 C.L.R. 394;

*Savva v. E.A.C.* (1986) 3 C.L.R. 80.

**Recourse.**

Recourse against the decision of the respondent to promote the interested party to the post of Assistant Engineer, Class II, at the Electrical Department, Dhekelia Station "A" in preference and instead of the applicant. 10

*N. Stylianidou (Miss)* for *E. Efsthathiou*, for the applicant.

*D. Michaelidou (Mrs.)*, for *G. Cacoyiannis*, for the respondent. 15

*Cur. adv. vult.*

MALACHTOS J. read the following judgment. The applicant claims by the present recourse a declaration of the Court that the decision of the respondent Authority to promote the interested party, P. Solomonides, to the post of Assistant Engineer, Class II, at the Electrical Department, Dhekelia Station "A", instead of the applicant, is null and void and of no legal effect whatsoever. 20

The applicant was first employed by the respondent Authority on 21.11.62 as a temporary labourer. He was appointed to the permanent post of Electrical fitter on 1.1.64, to the post of Foreman on 1.4.73 and to his present post of Technical Assistant Engineer at the Moni Electric Power Station on 1.5.80. 25 30

The vacancy in the post of Assistant Engineer, Class II, in the Electrical Maintenance Department for the Electric Power Station, Dhekelia "A", was advertised on 3.2.82, for which post both the applicant and the interested party applied. Their applications were considered in ac- 35

cordance with the Joint Advisory Selection Committee Regulations, by the Joint Advisory Selection Committee for Promotions and Regradings which selected unanimously only one candidate, the interested party, as the only suitable candidate to be recommended for promotion and submitted its report to this effect to the Authority on the 18.5.82.

The Sub-Committee of the Authority on staff matters at its meeting of 1.6.82 decided to recommend to the Authority the interested party for promotion.

The respondent Authority at its meeting of 11.6.82 considered, inter alia, the recommendations of the Sub-Committee and decided to promote the interested party to the post of Assistant Engineer, Class II. As against this promotion, the applicant filed the present recourse.

One of the grounds of law put forward on behalf of the applicant is that the procedure followed by the respondent Authority was based on regulations which were invalid not having been published in the Official Gazette of the Republic because as provided in section 3(3) of the Public Corporations (Regulation of Personnel Matters) Law of 1970 (Law 61/1970), they are deemed to be subsidiary legislation and as such they ought to have been published.

Counsel for the respondent submitted, on the other hand, that the said regulations are only internal rules for the validity of which there was no requirement of publication, not being subject to the provisions of the Electricity Development Law, Cap. 171, as amended by Law 16/60.

In the case of *Kofteros v. E.A.C.* (1985) 3 C.L.R. 394 where the validity of the regulations, which are the same as those attacked in the present recourse, was challenged, it was decided that the said regulations were invalid, not having been published in the Official Gazette of the Republic, nor having received the approval of the Council of Ministers.

At p. 403 of this report, the following is stated:-

“It was submitted by counsel of the respondents that their publication was not necessary as they were simply internal rules. Reliance was placed on *Constantinou v. CY.T.A.*, (1980) 3 C.L.R. 243, at pp. 252-253. *Constantinou* case is a judgment of a Judge of co-ordinate jurisdiction. It was not followed in *Arsalides and Another v. CY.T.A.* and in *Christos Sofocleous v. The Electricity Authority of Cyprus* (Case No. 232/82—unreported). Appeal was taken against the decision in *Constantinou* case. The sub judge decision was revoked by agreement of the parties and sanction of the Court, and the respondent Authority undertook to reconsider the matter. The effect of *Constantinou* case was extinguished by the outcome of the appeal which was sanctioned by the Full Bench of the Supreme Court.

The sub judge decision for promotion of the interested party is null and void as taken under non-existent in Law rules or regulations.”

The appeal filed against the aforesaid judgment in the *Kofteros* case (supra), was subsequently withdrawn. *Kofteros* case was cited with approval in the case of *Christos Savva v. E.A.C.* (1986) 3 C.L.R. 80, where the regulations in question were also considered invalid.

In view of the fact that this matter disposes of the case, I do not find it necessary to deal with the remaining grounds of law put forward by the applicant.

In the result, this recourse succeeds and the sub judge decision is hereby annulled.

On the question of costs, I make no order.

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