

1987 October 30

[LORIS J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

1 STELIOS STYLIANOU,
2 KYRIACOS MATSENTIDES

Applicants,

v

THE EDUCATIONAL SERVICE COMMISSION,

Respondent

(Case No 967/85)

Administrative Law — General principles — Subsidiary legislation — Once enacted by the competent organ, it has to be complied with, until repealed or declared by a judicial decision to be ultra vires the law

Administrative Law — General principles — Legality of an administrative act — Governed by the legislation in force at the time it was made

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By means of this recourse the applicants challenged the appointment on contract for the period of 1 9 85-30 11 85 of the interested parties as Schoolmasters of Gymnastics

The sub judice appointments were made in contravention of the list of priorities, compiled in virtue of Reg 5 of the Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) Regulations, 1972, as amended in 1974 The relevant decision was taken before the decision in *Savva v Republic* (1986) 3 C L R 445, whereby Regs 5 and 10 of such regulations were declared ultra vires the enabling law

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Held, *annulling the sub judice decision* that regulations made by the competent organ have to be complied with until recalled by the organ itself or declared ultra vires by a judicial decision, as the legality of an administrative act is governed by the legislation in force at the time it was made, the sub-judice decision must be annulled

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Sub judice decision annulled
No order as to costs

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The present recourse was opposed by the Respondent Commission; all the interested parties, with the exception of interested party No. 12 namely Eleftheria HjiStefanou, were duly served; fourteen of them did not appear whilst interested parties 4 and 15 appeared through counsel and opposed the present recourse. 5

As interested party No. 12 was not served as late as the 10th September 1986, recourse against her was withdrawn and dismissed on 10.9.86.

At the hearing of this case learned counsel appearing for the respondent conceded that the sub-judice decision was wrong in principle as the priority tables, which were in force at the time the sub-judice decision was reached, were not followed. Counsel cited the case of *Kissonerghis v. E.S.C.* decided by this Court on 30.3.87 (Case No. 903/85 - judgment delivered on 30.3.87* - still unreported) and invited the Court on the same principles to annul the sub-judice decision in this case as well, stating at the same time, that in this case, the departure of the Respondent Commission from the order of priorities was not due to the recommendations of the Ministry of Education. 10 15 20

Counsel appearing for the interested parties No. 4 and 15, adopted the stand taken by learned counsel appearing for the respondent and conceded that in view of the fact that the priority tables, which were in force at the time of the sub-judice decision was reached by the respondent, were not followed and in view of the decision in *Kissonerghis case* (supra) the sub-judice decision could not stand. 25

It is abundantly clear that the sub-judice decision was reached on 1.9.85 when the aforesaid regulations fixing the order of priorities were still in force; the case of *Savva v. Republic* (1986) 3 C.L.R. 445 whereby regulations 5 and 10 were declared ultra vires the enabling enactment (Law 10/69) was decided subsequently i.e. on 8.3.86; and as the regulations in question were made by the competent organ they had to be complied with until recalled by the organ itself, or declared ultra vires by a judicial decision (*Kapsou v. Republic* (1983) 3 C.L.R. 1336). 30 35

* Reported in (1987) 3 C.L.R. 312.

Once the aforesaid regulations were in force at the time of the sub-judice decision, they constituted the law applicable to this case as the legality of administrative acts is governed by the legislation in force at the time they were made (*Lordou & Others v. Republic (1968) 3 C.L.R. 427, Kynakidou v. Republic (1986) 3 C.L.R. 913*).

Therefore the sub-judice decision has to be annulled on the ground that the respondent did not follow the relevant regulations which were valid and in force at the time such decision was reached by the respondent Commission.

In the result the sub-judice decisions is hereby annulled in respect of all the interested parties with the exception of interested party No. 12 namely Eleftheria HjiStefanou, against whom the present recourse was withdrawn and dismissed as stated earlier on in the present judgment.

Let there be no order as to costs.

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