

1987 November 4

[MALACHTOS. J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION
GEORGIA KATSOUNOTOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH,
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 245/82).

Public Officers — Promotions — Combined post — The Public Service Law 33/67, section 44(1)(a) — Circular 608/82 issued under the proviso to s. 44(1)(a) — The directive in the circular that no recommendation for promotion shall be made during the probationary period of an officer is not ultra vires the aforesaid section — Savva v. The Republic (1985) 3 C.L.R. 694 distinguished.

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The respondent Commission refused to accept a recommendation for the promotion of the applicant, an Accounting Officer, 3rd Grade to the combined post of Accounting Officer 2nd Grade, because the applicant was still serving in the post of Accounting Officer, 3rd Grade on probation and, consequently, her promotion was not allowed in view of the provisions of Circular 608 dated 27 1.82 of the Council of Ministers

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Hence this recourse.

Held, *dismissing the recourse*: (1) The relevant provision of the law is section 44(1)(a) of Law 33/67. Circular 608 was issued under the proviso to the aforesaid section.

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(2) The Circular provides, inter alia, that no recommendation for promotion shall be made during the probationary period of an officer, or extension of same. Such directions are not ultra vires the Law.

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*Recourse dismissed.
No order as to costs.*

Cases referred to:

Savva v. The Republic (1985) 3 C.L.R. 694.

Recourse.

Recourse against the refusal of the respondent to promote the applicant to the post of Accounting Officer 2nd Grade.

A. S. Angelides, for the applicant.

R. Gavrielides, Senior Counsel of the Republic, for the respondent. 5

Cur. adv. vult.

MALACHTOS J. read the following judgment. By the present recourse the applicant claims a declaration of the Court that the decision of the respondent Commission not to promote the applicant to the post of Accounting Officer, 2nd Grade, is null and void and of no legal effect whatsoever. 10

The facts, so far as relevant, are briefly as follows:

The Accountant-General by letter dated 13.2.81 recommended to the Public Service Commission the promotion of twelve Accounting Officers, 3rd Grade, including the applicant, to the combined post of Accounting Officer, 2nd Grade, and confirmed therein that the said officers: 15

(a) performed the duties of Accounting Officer, 3rd Grade, satisfactorily; 20

(b) completed the 5-year service required by the scheme of service for the post of Accounting Officer, 2nd Grade, prior to 31.12.81, and

(c) satisfied all other requirements of the scheme of service of the post of Accounting Officer, 2nd Grade, that is, were on 1.10.81 serving in the post of Accounting Officer, 3rd Grade, and also passed the required examinations. Moreover, it was stated in the said letter that Georgia Katsounotou, the applicant, is the holder of a degree in Business Administration. 25

The respondent Commission met on 13.3.82 and decided on the material before it that all officers recommended, except the applicant, were eligible for promotion, and so promoted them as from 15.3.82 to the combined permanent post of Accounting Officer, 2nd Grade. 30

The respondent Commission further decided that as regards the applicant, taking into consideration the general directions issued by the Council of Ministers on 21.1.82 she could not be promoted 35

as she was still serving on probation in the post of Accounting Officer, 3rd Grade The Accountant-General was informed accordingly

5 As a result of the aforesaid decision of the respondent Commission, the applicant filed the present recourse

The main argument of counsel for applicant is that the respondent Commission erred in not promoting the applicant as in the relevant scheme of service there is no provision that the candidates on probation are not eligible for promotion

10 It was further contended that section 44 of the Public Service Law, Law 33 of 1967, which contains the provisions relevant to promotions, does not provide that officers serving on probation are not entitled to promotion and the case of *Savva v The Republic* (1985) 3 C L R 694, was cited in support of this
15 proposition

Finally, it was submitted that if the decision of the respondent Commission was based on Circular No 608 dated 27 1 82 of the Department of Public Administration and Personnel containing
20 general directions of the Council of Ministers as to the way of effecting promotions of public officers in combined posts, then such decision must be annulled as such circular is ultra vires the law

The relevant provision of the Law is section 44(1)(a) which is as follows

25 «44 -(1) No officer shall be promoted to another office, unless-

(a) a vacancy exists in that office Provided that in the case of offices with a combined establishment, promotion from the lower to the higher office or grade of that office may be made
30 irrespectively of whether there is a vacancy in the higher office or grade or not, and in accordance with any general directions given by the Council of Ministers in this respect »

In accordance with this proviso the Council of Ministers issued on the 21 1 82 general directions providing, inter alia, that -

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2 No recommendation for promotion shall be made during the probationary period of an officer, or extension of same, as well as during the first two years of service of an officer appointed by the

Public Service Commission on a temporary basis on contract or on a month to month basis or on secondment in an organic post.

I do not consider that such directive is contrary to the proviso of section 44(1)(a) referred to above, as there is nothing in the aforesaid proviso limiting the scope of the directions the Council of Ministers may issue thereunder. Such directions are not, in my view, ultra vires the Law.

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The case of *Savva v. The Republic* (supra), where it was decided that public officers serving on probation are eligible for promotion to another office provided that a vacancy exists, is clearly distinguishable from the case in hand as the considerations pertaining to the promotions of officers to another vacant post is not the same as in the case of promotions of officers serving in a combined establishment, where all officers eligible under the scheme of service are recommended for promotion, irrespective of whether there is a vacancy in another office or not and in which case no question of selection of the best candidate arises.

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For the reasons stated above, I came to the conclusion that the respondent Commission correctly decided as it did and that the sub judice decision was reached in accordance with the provisions of the law. The recourse, therefore, fails and is hereby dismissed, with no Order as to costs.

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*Recourse dismissed.
No order as to costs.*