

1987 March 24

[A LOIZOU MALACHTOS SAVVIDES PIKIS KOURRIS JJ]

PHOEBUS TSOUNTAS AND OTHERS,

Appellants Applicants

v

THE REPUBLIC OF CYPRUS, THROUGH THE
PUBLIC SERVICE COMMISSION,

Respondents

(Revisional Jurisdiction Appeal No 566)

Public Officers — Appointments — Completion of — Renaming of post in question by law enacted after the acceptance of the offer for appointment of the interested party to such post — Effect

5 *Public Officers — Appointments — Publication of, in the official Gazette — An act of execution*

The interested party was one of the candidates for appointment to the post of Archives Officer, 1st Grade at the House of Representatives a first entry and promotion post

10 On the 9 4 81 the Public Service Commission offered the appointment to the interested party, who accepted it by letter dated 15 4 81

15 By virtue of the Supplementary Budget Law 20/81 promulgated on the 22 4 81, the post of Archives Officer, 1st Grade was renamed to Clerk, 1st Grade, in the General Clencial Staff It should be noted that the post of Clerk 1st Grade, is a promotion post from the immediately lower post of Clerk Second Grade

20 As a result of the enactment of the said law the respondent Commission decided to emplace the interested party to the post of Clerk, 1st Grade as from 15 6 81 It was this decision that was published in the official Gazette of the 19 6 81

25 The appellants, who were not among the candidates for appointment to the post of Archives Officer, 1st Grade, but at all material times, were serving as Clerks, 2nd Grade in the General Clencial Staff, challenged the said appointment of the interested party by means of a recourse for annulment which was eventually dismissed by the President of this Court Hence the present appeal

Tsountas and Others v. Republic (1987)

Held, dismissing the appeal (1) The appointment of the interested party had been completed by the acceptance of the offer made to her before the enactment of Law 20/81 The publication of the appointment was only an act of execution The change effected by Law 20/81 demanded the corresponding adaptation as regards the post to which the interested party had been appointed in relation to the carrying into effect of the said appointment

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(2) In the light of the above this appeal should fail

A ppeal dismissed

*Appellants to pay £100
costs against the costs of
the interested party*

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Cases referred to

Zachanades v The Republic (1984) 3 C L R 1193

Appeal.

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Appeal against the judgment of the President of the Supreme Court of Cyprus (Triantafyllides, P.) given on the 15th February, 1986 (Revisional Jurisdiction Case No. 278/81)* whereby appellants' recourse against the promotion of the interested party to the post of Clerk 1st Grade in the General Clerical Staff was dismissed.

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E. Lemonaris, for the appellants

A. Papassavvas, Senior Counsel of the Republic, for the respondents.

A.S. Angeliaes, for the interested party.

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Cur. adv. vult.

A. LOIZOU, J. read the following judgment of the Court. The appellant along with over a hundred and fifty officers serving in the post of Clerk Second Grade challenged by a recourse under Article 146 of the Constitution the appointment of the interested party to the post of Clerk First Grade in the General Clerical Staff. That recourse was dismissed by the learned President of this Court on the ground that the present appellants «did not seek appointment to the post of Archivist First Grade, at the House of Representatives and so they could not validly contend that a

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* Reported in (1986) 3 C L R 1417

legitimate interest of theirs in the sense of Article 146(2) of the Constitution was in any way affected by the selection of the interested party by the respondent Commission for appointment to such post, nor was there affected adversely and directly any
5 such legitimate interest of the appellants by the subsequent
emplacement of the interested party in the post of Clerk First
Grade because none of them had applied for appointment to the
post of Archivist which became later by operation of the
10 Supplementary Budget Law (No. 3) 1981 (Law No. 20 of 1981) a
post of Clerk First Grade in which the interested party was
emplaced not instead of anyone of the applicants and in any event
independently of any claim of anyone of them to be promoted.

As against that judgment they filed the present appeal. The relevant facts are briefly these.

15 On the 30th August 1980, the President of the House of
Representatives acting as the appropriate Authority with the
consent of the Ministry of Finance proposed to the respondent
Commission to take all necessary steps for the filling of the
permanent post of Archivist, First Grade at the House of
20 Representatives. The said post was a first entry and promotion one
and the vacancy in it was advertised in the official Gazette of the
Republic of the 10th October, 1980. Thirty-seven persons, one of
whom was the interested party applied for appointment. None of
the applicants in the present recourse was among them.

25 At its meeting of the 6th April 1981 the respondent
Commission after following the prescribed procedure decided
that the interested party was superior to the remaining candidates
and the most suitable for that post and selected her for
appointment on probation. On the 9th April, the interested party
30 was informed by letter that the respondent Commission had
decided to offer her appointment on probation to the Permanent
(Ordinary) Post of Archives Officer First Grade in the House of
Representatives, which the interested party accepted by the letter
of the 15th April 1981. In the meantime, however, and by letter
35 dated the 31st March 1981, the Director-General of the Ministry of
Finance communicated to the respondent Commission a copy of
a letter he had addressed to the Director-General of the House of
Representatives by which he was informing them that the Minister
of Finance had withdrawn his approval for the filling of the vacant
40 post of Archivist Officer, First Grade as a result of a recent decision
of the Joint Reorganization Committee for the transfer of the two

posts of Archivist Officer, First Grade to the General Clerical Staff and they were asked not to proceed with the filling of the post. The Director-General of the House of Representatives by letter of the 8th April referred to the immediate needs of their office and expressed the view that there was no reason why, because of the transfer of the post to the General Clerical Staff, the filling of the post should be suspended. Copy of the said letter was sent to the Public Service Commission. 5

In the light of the above the Chairman of the Public Service Commission by letter dated 9th April 1981 addressed to the Director-General of the Ministry of Finance, after reminding him of the provisions of section 17 of the Public Service Laws 1967-1980, informed him that in view of the fact that the proposal for the filling of the post had not been withdrawn by the appropriate Authority, the Commission would proceed to the appointment of the person selected. 10 15

We may pause here for a moment and say that this approach of the Chairman of the Public Service Commission was in accordance with the provisions of section 17 of the Law and it is fully supported by the judgment of the Full Bench of this Court in *Zachariades v. The Republic* (1984) 3 C.L.R. 1193 at p. 1236. 20

On the 22nd April 1981, the aforementioned Supplementary Budget Law was published in the official Gazette. By virtue of its provisions the post of Archives Officers First Grade were renamed to Clerks First Grade in the General Clerical Staff who retained salary scale A. 7 as it was before. It may be noted here that normally the post of the Clerk First Grade is a promotion post from the immediately lower post of Clerk Second Grade and in order that the holder of such lower post be eligible for promotion, must, inter alia, have considerable experience of Government office work and must have passed the examinations in General Orders and Financial Instructions. Moreover before the enactment of Law 20/81 the post of Clerk First and Second Grade were separate whereas now they became joint. In the light of the situation as it developed the respondent Commission sought legal advice from the Attorney-General of the Republic. 25 30 35

The Deputy Attorney-General advised inter alia that on account of the change made to the posts there should be corresponding

adaptation as regards the post to which «Miss Adamou (now the interested party) was appointed and that the necessary instrument of appointment should refer to the post of Clerk First Grade which corresponds with the previous post for which her original
5 appointment had already been completed».

The respondent Commission at its meeting of the 6th June 1981, decided to emplace the interested party to the post of Clerk First Grade in the General Clerical Staff and fixed as a date of commencement of her appointment to that post the 15th June
10 1981 and it was that decision that was published in the official Gazette of the Republic of the 19th June 1981, under Notification 1141.

Learned counsel for the appellants has argued that as the interested party did not possess the required qualifications she
15 could not be appointed to that post.

We have considered the case and we have come to the conclusion that this appeal should fail as the appointment of the interested party had been completed by the acceptance of the offer made to her before the 22nd April 1981, when the Law
20 renamed the post. The publication of the appointment was only an act of execution. The change effected to the vacant post in which the interested party was appointed by the intervening enactment of Law 20/81 demanded the corresponding adaptation as regards
25 the post to which the interested party had been appointed in relation to the carrying into effect of the said appointment. No doubt under section 37 of the Public Service Law « a permanent appointment is effected by a written offer made by the Commission to the person selected for appointment and accepted by him in writing», and this has been complied with in the present
30 case.

As regards costs, having considered the totality of the circumstances of this case, we have come to the conclusion that the appellants should pay £100. - as against the costs of the interested party in this appeal.

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*Appeal dismissed.
Appellants to pay £100.-
against costs of interested
party.*