

(1987)

1987 January 23

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS ARISTODEMOU AND ANOTHER,

Applicants,

v.

THE ELECTRICITY AUTHORITY OF CYPRUS,

Respondent.

(Case Nos. 381/82 & 452/82).

Public Corporations—Electricity Authority of Cyprus—Promotions—Joint Advisory Committee for Promotions and Regradings—The Regulations relating to such Committee are invalid as they were neither approved by the Council of Ministers nor published in the Official Gazette—The Electricity Development Law, Cap. 171, as amended by Law 16/60, s.44—The setting up and decisions of said Committee invalid—Final act of promotion null and void.

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Recourse for annulment—Power of Court to raise and examine issue ex proprio motu.

The applicants were among the candidates for promotion to the post of Acting Head of the Department of Financial Services for Famagusta—Lamaca District. The relevant applications of the candidates were considered by the Joint Advisory Selection Committee for Promotions and Regradings, which selected unanimously three candidates, that is the interested parties and applicant in case 452/82. The report of the said Committee was examined by the Sub Committee on Staff Matters, which decided to recommend the interested parties for promotion to the said post. The respondents considered, inter alia, the recommendation of the said Sub Committee and decided to promote the interested parties to the said post. Hence the present recourse.

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Held, *annulling the sub judice decision*:(1) Though the issue has not been raised by the parties, this Court has power to examine ex proprio motu the issue of the validity of the Regulations relating to the Joint Advisory Selection Committee.

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(2) The said Regulations are invalid as not having been approved by the Council of Ministers and as not having been published in the Official Gazette as provided by s.44 of Cap. 171, as amended by Law 16/60.

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(3) It follows that the setting up of the said Committee and its decisions are *invalid and, as such decisions are part and parcel of the final decision of promotion, the sub judice promotions are also invalid.*

Sub judice decision annulled.

No order as to costs.

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Cases referred to:

Lambrakis v. The Republic (1970) 3 C.L.R. 72;

Cyprus Transport Co. Ltd., v. The Republic (1970) 3 C.L.R. 163;

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

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

Gavriel v. E.A.C. (1986) 3 C.L.R. 1465.

Recourses.

15 Recourses against the decision of the respondents to promote the interested parties to the post of Acting Head of the Department of Financial Services in preference and instead of the applicants.

Ph. Valiantis, for the applicant in Case No. 381/82.

Applicant in Case No. 452/82 appeared in person.

D. Michaelidou (Mrs.), for the respondent.

Cur. adv. vult.

20 MALACHTOS J. read the following judgment. By the present recourses, which were heard together as they attack the same administrative decision, the applicants claim a declaration of the Court that the decision of the respondent Authority to promote the interested parties, namely, G. Tassou and A. Andreou to the post
25 of Acting Head of the Department of Financial Services instead of the applicants, is null and void and of no legal effect whatsoever.

Applicant in Case No. 381/82, Georghios Aristodemou, was first appointed by the respondent Authority on 1.6.57 and he served thereafter in various sections of the Financial Department.

30 Applicant in Case No. 452/82, Andreas Kalafatis, first entered the service of the respondent Authority on 11.4.57 and at the time the sub judice decision was taken he held the post of Clerk I.

The vacancies in the post of Acting Head of the Department of Financial Services for the Famagusta-Lamaca District Office, were advertised on 10.3.82 and nine employees of the Authority, including the two applicants and the interested parties, applied. Their applications were considered in accordance with the Joint Advisory Selection Committee Regulations, by the Joint Advisory Selection Committee for Promotions and Regradings, which selected unanimously three candidates, the interested parties and applicant in Case No. 452/82, as suitable candidates to be recommended for promotion and submitted its report to the respondent Authority on 29.6.82. 5 10

This report was considered by the Sub Committee of the Authority on Staff Matters at its meeting of 7.7.82, which decided to recommend to the Authority the interested parties for promotion. 15

The respondent Authority at its meeting of 27.7.82 considered, inter alia, the recommendations of the Sub Committee and decided to promote the interested parties.

As against such promotions the applicants filed the present recourses. 20

The grounds of law on which both recourses are based may be summarised as follows:

1. That the respondents acted under a misconception of fact in that they disregarded the fact that the applicants are superior to the interested parties in merit, qualifications and seniority. 25
2. That the sub judice decision lacks due or any reasoning, and
3. That the respondent Authority acted in a discriminatory manner towards the applicants.

Before examining the grounds of law and the arguments put forward on behalf of the applicants, I hold the view that there arises an issue which must be considered first and which, even though not raised by the parties, may be examined by this Court ex proprio motu - See *Lambrakis v. The Republic* (1970) 3 C.L.R 72 at p.74; also *Cyprus Transport Co. Ltd. and Another v. The Republic* (1970) 3 C.L.R. 163 at p. 166-167. 30 35

5 This matter is the issue of the validity of the Joint Advisory Selection Committee Regulations by virtue of which the Joint Advisory Selection Committee was set up and a pre-selection of the candidates was made on the basis of which the final selection of the candidates was made by the respondent Authority.

10 In the present case, the validity of such regulations was not raised, however, it was in issue in several cases before this Court where it was decided that such regulations were invalid as not having received the approval of the Council of Ministers and as not
15 having been published in the Official Gazette of the Republic, as is required by section 44 of the Electricity Development Law, Cap. 171, as amended by Law 16 of 1960. See *Kofteros v. EAC* (1985) 3 C.L.R. 394 at 403; *Savva v. EAC* (1986) 3 C.L.R. 80; *Georghios Gavriel v. EAC* (Recourse No. 296/82, unreported*, judgment
20 delivered on 29.10.86).

The fact is that the said regulations being invalid render the setting up of the Joint Advisory Selection Committee and its decisions equally invalid, as such decisions being part and parcel of the final decision of the respondent Authority, invalidate as a result
25 such decision of the Authority and the promotions or appointments made thereby.

In view of the fact that the above matter disposes in effect the whole case, I do not consider it necessary to pronounce on the other grounds of law put forward by the applicants.

30 In the result, the sub judice decision is hereby annulled.

There will be no order as to costs.

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

*Now reported in (1986) 3 C.L.R. 1465.