

1987 January 22
(MALACHTOS, J)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

1. GEORGHIOS PAMPAKA,
2 IOANNIS DEMETRIOU,

Applicants,

v.

THE ELECTRICITY AUTHORITY OF CYPRUS,

Respondent

(Case No 550/82)

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—Pre-selection of candidates for promotion by said Committee invalid—Final act of promotion null and void.

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Recourse for annulment—Additional ground of annulment—Practice

The applicants were among the candidates for promotion to the post of Technical Assistant Engineer in the Operation Department. The relevant applications of the candidates for the post were considered by the Joint Advisory Selection Committee for Promotions and Regradings which selected six of the ten candidates, including the applicants and the interested parties. The sub Committee on Staff Matters decided to recommend for promotion four candidates, including the interested parties. The respondents considered, inter alia, the said recommendations and decided to promote those recommended. As a result the applicants filed the present recourse.

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Held, *annulling the sub judice decision* (1) Though the issue of the validity of the procedure followed for the sub judice decision was not raised in the grounds of law set out in the above application, but only in the written address of counsel for applicants, it can nonetheless be considered by this Court (*Cyp-
rus Flour Mills Ltd v The Republic* (1973) 3 C L R 690)

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(2) The Regulations relating to the Joint Advisory Committee for Promo-

tions and Regradings are invalid because they were neither approved by the Council of Ministers nor published in the Official Gazette.

- 5 3) As the final act of promotion was based on the pre-selection made by the said Committee on the basis of the said invalid Regulations and as such pre-selection is part and parcel of the final act, the sub judge promotions have to be annulled.

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

Cases referred to:

- 10 *Cyprus Flour Mills Ltd. v. The Republic* (1973) 3 C.L.R. 690;
Istambouli Bros v. The Director of the Department of Customs (1986) 1 C.L.R. 465;
Kofteros v. E.A.C. (1985) 3 C.L.R. 394,
Savva v. E.A.C. (1986) 3 C.L.R. 80;
Gavriel v. E.A.C. (1986) 3 C.L.R. 1465.

15 **Recourse.**

Recourse against the decision of the respondent to promote the interested parties to the post of Technical Assistant Engineer in the Operations Department in preference and instead of the applicants.

- 20 *Ph. Valiantis*, for the applicants.
S. Pouyouros, for the respondent.

Cur. adv. vult.

- 25 *MALACHTOS J. read the following judgment. The applicants by the present recourse claim a declaration of the Court that the decision of the respondent Authority to promote the interested parties, namely, Chr. Papastylianou, L. Flouris and A. Theodorides to the post of Technical Assistant Engineer in the Operations Department, instead of the applicants, is null and void and of no legal effect whatsoever.*

The facts of the case are the following:

- 30 *Applicant I was first appointed temporarily by the respondent Authority on 15.3.67 and on 1.2.68 he became a permanent employee.*

- 35 *On 1.7.81 this applicant was promoted to the post of Plant Operator I. He is a graduate of the Lanition Gymnasium Limassol, and has obtained the Boiler Operator's Certificate and the Steam Turbine Plant Operation (PE I & II) of the City & Guilds Institute.*

Applicant 2 was first appointed temporarily by the respondent Authority on 13.5.63 and was appointed to a permanent post on 1.1.64. He became Plant Operator I on 1.7.81. He is graduate of the Lamaca Commercial Lyceum.

On 28.6.82 four vacancies in the post of Technical Assistant Engineer in the Operations Department for the Moni Electric Power Station were advertised and ten employees of the Authority, including the applicants and the interested parties applied. Their applications were considered at the meetings of the 14th and 20th October, 1982, in accordance with the Joint Advisory Committee Regulations, by the Joint Advisory Selection Committee for Promotions and Regradings which selected unanimously six out of the ten candidates, including the applicants and the interested parties as the most suitable for the post in question.

The Sub Committee of the Authority on Staff Matters at its meeting of 9.11.82 decided to recommend to the Authority for promotion four candidates, including the interested parties.

The respondent Authority at its meeting of 12.11.82 considered, inter alia, the recommendations of the Sub Committee and decided to promote the four candidates recommended, including the interested parties, to the post of Technical Assistant Engineer in the Operations Department of the Electric Power Station of Moni, with effect as from 1.12.82.

As a result of the promotions of the three interested parties, the applicants filed the present recourse. In the course of the hearing, however, the recourse was withdrawn against interested party Papastylianou and remained only as against interested parties Flouris and Theodorides.

The grounds of law upon which the recourse is based may be summarised as follows:

1. That the respondent Authority acted under a misconception of fact by disregarding the fact that the applicants are superior to the interested parties in merit, qualifications and seniority.

2. That the respondent Authority acted in abuse and/or excess of power in that it failed to select the most suitable candidates.

3. It acted in a discriminatory manner towards the applicants, and

4 The sub judge decision lacks due or any reasoning

It was argued by counsel for the applicants in his written address that the procedure followed by the respondent Authority in effecting the said promotions was invalid and illegal having been based
5 on regulations which were invalid not having been approved by the Council of Ministers or published in the Official Gazette of the Republic in accordance with section 44 of the Electricity Development Law, Cap 171, as amended by Law 16 of 1960

Though such matter was not raised in the grounds of law as set
10 out in this application, it can nonetheless be considered by this Court See *Cyprus Flour Mills Ltd v The Republic*, (1973) 3 C L R 690 at p 694, where the following is stated

«In Cyprus the established practice seems to be that in a proper case and subject to the necessary safeguards for the protection of the other side, additional grounds or reasons for annulment are allowed to be put forward in the course of the proceedings in a recourse as the justice of the case may require', this practice has developed in accordance, largely,
15 with rule 19 of the Supreme Constitutional Court Rules, and there does not exist here any prescribed by legislation time-limit after which additional reasons or grounds cannot be advanced »

See also Civil Appeal 6300, *Istambouli Bros v The Director of the Department of Customs & Excise* (yet unreported)* (Judgment
25 delivered on 17 12 86)

Counsel for the respondent, on the other hand, submitted that the said regulations are only internal rules which concern only the Joint Advisory Selection Committee, the purpose of which is solely to advise the Authority, such advice not being binding, and
30 which Committee takes no part in the decision making process and in the final selection In any event it was argued, the respondent Authority did not follow such regulations It was further submitted that section 3(2) of the Public Corporations (Regulation of Personnel Matters) Law, 1970 (Law 61 of 1970), does not
35 impose any obligation on the respondent Authority to issue such regulations but only an obligation to follow such regulations when they exist In the present case there were none concerning the respondent Authority

*Now reported in (1986) 3 C L R 465

In the case of *Kofteros v. EAC* (1985) 3 C.L.R. 394 where the validity of the regulations in question was challenged, it was decided that they were invalid as not having received the approval of the Council of Ministers and as not having been published in the Official Gazette of the Republic.

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Relevant is the following passage which appears at p.403 of the said report:

«It was submitted by counsel for 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 Sofokleous 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.

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

An appeal was filed against the aforesaid judgment in *Kofteros* case. It was subsequently withdrawn. *Kofteros* case, supra, was cited with approval in the case of *Christos Savva v. EAC* (1986) 3 C.L.R. 1 and *Georghios Gavriel v. EAC* (Case No. 296/82) (yet unreported)* where the said regulations were also considered invalid.

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That the regulations in question may concern only the Joint Advisory Committee and not the Authority itself, as argued by the respondents, does not validate the decision because such decision, the final selection of the candidates, was based on a pre-selection made for that purpose by the Joint Advisory Committee on the basis of regulations which have been considered invalid and such pre-selection is part and parcel of the final act.

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As this matter in effect disposes of the case, I consider it

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

unnecessary to pronounce on the remaining grounds of law put forward on behalf of the applicants.

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

5 There will be no order as to costs.

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