

1986 March 15
(TRIANTAFYLIDIS P I)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LIZA SAVVA,

Applicant,

v

THE PORTS AUTHORITY OF CYPRUS,

Respondent.

(Case No. 621/84).

Legitimate interest — Promotions — Decision giving retrospectivity to an earlier promotion — Recourse challenging such earlier promotion dismissed — Applicant does not possess a legitimate interest to challenge the said retrospectivity.

Administrative Law — General Principles — Proper administration — Good faith is one of its essential characteristics — Decision giving retrospective effect to a promotion — In compliance with an agreement between the Ministry and the trade union of the employees of the respondent — Retrospectivity necessary for the purposes of proper administration. 5

By means of the sub judice decision there was given retrospective effect to the promotion of the interested party to the post of Accounting Officer, 1st Grade. The recourse of the applicant, whereby she had challenged the first decision to promote the interested party, was dismissed earlier to-day (See *Savva v. Ports Authority of Cyprus* (1987) 3 C.L.R. 715) 10

Held, *dismissing the recourse*: (1) In view of the dismissal of the said recourse and in the light of the decision in *HadjiSavva v. The Republic* (1982) 3 C.L.R. 76 at p.80 the applicant has no legitimate interest to challenge the retrospectivity of the promotion of the interested party. 15

(2) In any event and as the retrospectivity was the result of compliance with an agreement between the competent Ministry and the trade union of the employees of the respondent, the sub judice decision was necessary for purposes of proper administration, one of the essential characteristics of which is good faith. 20

Recourse dismissed.
No order as to costs. 25

Cases referred to:

Pitsillos v. C B C. (1982) 3 C L R 208.

Vorkas v. The Republic (1984) 3 C L R. 418.

Americanos v The Republic (1985) 3 C L.R. 540:

5 *Triantafyllides v. The Republic* (1982) 3 C L R 76.

Recourse.

Recourse against the retrospective promotion, as from 1st January, 1983, of interested party to the post of Accounting Officer, 1st Grade.

10 *A.S. Angelides*, for the applicant.

N. Papaefstathiou, for the respondent.

Chr. Triantafyllides, for the interested party.

Cur. adv. vult.

15 TRIANTAFYLLIDES P. read the following judgment. By means of the present recourse the applicant is complaining against the retrospective promotion, as from the 1st January 1983, of interested party V. Zannetti to the post of Accounting Officer, 1st Grade.

20 I have just delivered a judgment dismissing recourse No. 202/84* which was filed by the applicant against the promotion of the interested party to the post concerned and the contents of such judgment should be read together with the present judgment.

25 Counsel for the applicant submitted that on the basis of the principle of administrative law that an administrative act comes into force as from the date when it is made the sub judge promotion of the interested party could not have been given retrospective effect as aforesaid, and he went on to argue that, in any case, such promotion could not have been made retrospectively as from a date earlier than the 26th August 1983,
30 when it was decided by the Board to set in motion the process of the filling of the post in question.

It was argued, on the other hand, that the applicant has no legitimate interest entitling her to challenge the retrospectivity of the promotion of the interested party, especially, if it is found

* See (1987) 3 C.L.R 715

that there does not exist any valid reason for the annulment of such promotion.

Under Article 146(2) of the Constitution only a person whose existing legitimate interest has been adversely and directly affected as a result of administrative action may resort to the remedy of a recourse under Article 146(1) of the Constitution (see, inter alia, *Pitsillos v. The Cyprus Broadcasting Corporation*, (1982) 3 C.L.R. 208, 215, *Vorkas v. The Republic*, (1984) 3 C.L.R. 418, 421 and *Americanos v. The Republic*, (1985) 3 C.L.R. 540, 545). 5

It is to be particularly noted that in his judgment in *HadjiSavva v. The Republic*, (1982) 3 C.L.R. 76, Pikiis J. said the following (at p. 80): 10

«Having concluded that applicant failed to make out a case for interfering with the sub-judice decision, he ceases to have any legitimate interest to complain about the date of appointment of the interested parties, in this case retroactively made, for that does not affect his position in the service in any way. Consequently, I shall refrain from touching upon this issue. The recourse is dismissed.» 15

In the light of the foregoing and of the dismissal of the recourse No. 202/84, against the promotion of the interested party, I am of the view that the applicant has no legitimate interest entitling her to challenge the later decision about the retrospectivity of the promotion of the interested party. 20

In any event, as regards the substance of the matter, I would observe that, as the promotion of the interested party appears to have given the complained of retrospective effect as a result of adherence by the respondent to an agreement by the competent Ministry with the trade union of the employees of the respondent, the sub judice in the present case decision appears to have been necessary for purposes of proper administration, one of the essential characteristics of which is good faith. 25 30

In the result, the present recourse fails and it is dismissed accordingly; but with no order as to its costs.

Recourse dismissed. 35
No order as to costs.