

1987 January 7  
(STYLIANIDES J)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS D KALAFATIS

*Applicant*

v

ELECTRICITY AUTHORITY OF CYPRUS

*Respondent*

*(Case No 521/85)*

*Legitimate interest—Principles applicable—Public Corporations—Promotions—Applicant challenging promotion to a post two grades higher than the one he holds and not possessing required qualifications for sub judice post—Applicant does not possess a legitimate interest*

5 *Public Corporations—Promotions—Electricity Authority of Cyprus—Joint Advisory Selection Committee set up in accordance with regulations made in pursuance to a Collective Agreement made between the respondent Authority and the Union of its employees participating in the process of promotion—Regulations neither approved by the Council of Ministers nor published in the*  
10 *Official Gazette—Regulations invalid—Sub judice decision annulled*

*Public Corporations—Personnel matters—Electricity Authority of Cyprus—The Electricity Development Law Cap 171—Constitution stripped off Authority of all its powers thereunder as regards personnel matters—The Public Corporations (Regulation of Personnel Matters) Law 61/70—Section 3—*  
15 *Absence of rules or regulations governing the exercise of the power thereunder—Authority lacks competence to exercise such powers*

*Collective agreements—Do not create rights or obligations in public law*

The applicant who is a Clerk 1st Grade in the service of the respondents challenges by means of this recourse the promotion of interested party Kourouniades to the post of section Head in the department of commercial services and the promotion of interested party Kassardjian to the post of Deputy Section Head in the department of legal Services

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The post of section Head is two grades higher than the post held by the applicant and moreover the applicant did not possess the required qualifications for promotion to such post under the relevant scheme of service. The applicant, however, possessed the necessary qualifications for promotion to the post of Deputy Section Head

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It should be noted that in the process of taking of the sub judge decisions Joint Advisory Selection Committee, formed in accordance with regulations made under clause 24(1) (c) of the Collective Agreement 1974-75, made between the Authority and the Union of its employees, participated, but counsel the respondents, who admitted that such regulations were neither approved by the Council of Ministers nor published in the Official Gazette, argued that the part taken by the Committee was not such as to taint the final acts with illegality

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*Held, dismissing the recourse as regards the sub judge promotion to the said post of Section Head and annulling the sub judge promotion to the said post of Deputy Section Head* (1) The issue of an applicant's legitimate interest may be examined by the Court ex proprio motu. It is well settled that in the absence of an express provision to the contrary no officer may be promoted more than one grade at a time, moreover, the applicant in this case did not assess at the relevant time i.e., the last day for the submission of the applications for promotions - in this case 13 10 84, the required by the relevant scheme of service qualifications for promotion to the said post of Section Head. It follows that the applicant lacks legitimate interest to challenge the sub judge promotion to the post of Section Head

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2) A collective agreement does not create rights or obligations in public service. The regulations setting up the Joint Advisory Committee are plainly valid (*Kofteros v E A C* (1985) 3 C L R 394 and *Antoniades v E A C* (1985) 3 C L R 458). The Court is unable to say to what extent the recommendation of the said Committee influenced the final act of promotion. It follows that the sub judge promotion to the post of Deputy Section Head has to be annulled

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Furthermore there is another ground of annulment. The Constitution stripped the Authority of all powers under the Electricity Development Law, Cap 1 with regard to personnel matters (appointments, promotions etc). Due to the emergency situation and the vacuum created by the non functioning of the Public Service Commission envisaged by the Constitution, there was enacted the Public Corporations (Regulation of Personnel Matters) Law 61/84 but the powers under s 3 thereof cannot be validly exercised, unless the prerequisites provided by law are complied with. As no rules or regulations were made governing the exercise of such power, the respondents could not validly exercise competence in the matter

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*Recourse against sub judge promotion to the post of Section Head in the Department of commercial services dismissed. Sub judge promotion to the post of Deputy Head in the Department of legal service annulled. No order as to costs*

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Cases referred to:

- Constantinou v. The Republic* (1974) 3 C.L.R. 416;  
*Kritiotis v. The Municipality of Paphos and others* (1986) 3 C.L.R. 322;  
*Paraskevopoulou v. The Republic* (1980) 3 C.L.R. 647;
- 5 *Meletis and Others v. Cyprus Ports Authority* (1986) 3 C.L.R. 418;  
*Arkatitis v. The Republic* (1967) 3 C.L.R. 429;  
*Tryfon v. The Republic* (1968) 3 C.L.R. 28;  
*The Republic and Another v. Aristotelous* (1982) 3 C.L.R. 497;  
*The Republic v. Pericleous and Others* (1984) 3 C.L.R. 577;
- 10 *Mavrommatis and Others v. Land Consolidation Authority* (1984) 3 C.L.F. 1006;  
*Kofteros v. E.A.C.* (1985) 3 C.L.R. 394;  
*Antoniades v. E.A.C.* (1985) 3 C.L.R. 458.

**Recourse.**

- 15 Recourse against the decision of the respondents to promote the interested parties to the posts of Section Head and Deputy Section Head in the Departments of Legal Services and Commercial Services in preference and instead of the applicant.

*P. Angelides*, for the applicant.

- 20 *E. Liatsou (Mrs.) for G. Cacoyiannis* for the respondent.

*Cur. adv. vult*

STYLIANIDES J. read the following judgment. The applicant is Clerk, 1st Grade, in the service of the respondents.

- 25 On 28.9.84 the respondents advertised the posts of Deputy Section Head in the department of legal services and Section Head in the department of commercial services. They are promotion posts. Applications should have reached the Director of Personnel not later than 13.10.84. The applicant submitted applications for both posts.

- 30 The respondents on 19.2.85 promoted to the post of Section Head Marios Kourouniades and to the post of Deputy Section Head Garbis Kassardjian who were holders of the posts of Deputy Section Head and Clerk, 1st Grade, respectively.

The applicant, being aggrieved, by means of this recourse seeks the annulment of the aforesaid promotions

The revisional jurisdiction of this Court stems from Article 146 of the Constitution. A person cannot contest before this Court the validity of any decision, act or omission of any executive or administrative authority unless he possesses the quality of legitimate interest. Paragraph 2 of Article 146 provides that a recourse may be made by a person whose any existing legitimate interest, which he has either as a person or by virtue of being a member of the Community, is adversely and directly affected by such decision or act or omission. 5 10

A recourse for annulment requires in respect of an applicant a legitimate interest - (See *Fleiner, Administrative Law*, 8th Edition, pp 212 and 243, *Odent - Contentieux Administratif - Fascicule IV*, pp 1280 - 1281 *Tsatsos - The Recourse for Annulment Before the Council of State*, 3rd Edition, p 30) 15

A recourse is not an *actio popularis*. The interest of a person must be directly affected by the legal situation he seeks to be annulled. An applicant does not have the requisite *locus standi* to bring a recourse for annulment unless he is possessed of a legitimate interest at the time of the filing of the recourse until its determination. Lack of legitimate interest deprives the Court of the power and jurisdiction to deal with a recourse. 20

As the matter is one of public law, the presence of an existing legitimate interest has to be inquired into by an administrative court even *ex proprio motu* - (*Constantinou v The Republic*, 1974) 3 C L R 416, *Kritiotis v The Municipality of Paphos and others* (1986) 3 C L R 322) 25

Applicants for promotion not possessing the qualifications required under the relevant scheme of service have no legitimate interest which was adversely affected by the promotion impugned and they are not entitled to contest the validity of such promotion (See *inter alia* *Constantinou v The Republic*, (supra), *Paras-evopoulou v The Republic*, (1980) 3 C L R 647, *Meletis and others v Cyprus Ports Authority*, (1986) 3 C L R 418) 30

The applicant held and continues to hold the post of Clerk, 1st grade which carries a salary of Scale 7. The post of Deputy Section Head is hierarchically superior and the salary of such post is 35

the combined Scales of 8-9. The post of Section Head is over that of Deputy Section Head and the salary provided is Scale 10.

It is obvious from the above that the post of Section Head is two grades higher than the post of Clerk, 1st Grade.

5 It is a well settled principle of administrative law that no officer may be promoted for more than one grade at a time in the absence of express provision to the contrary. This principle was expounded in the case of *Arkatis v. The Republic*, (1967) 3 C.L.R. 429, which was ever since followed and applied - (See, inter alia, *Andreas Tryfon v. The Republic of Cyprus, through the Public Service Commission*, (1968) 3 C.L.R. 28; *The Republic and Another v. Aristotelous*, (1982) 3 C.L.R. 497).

15 The applicant in view of the absence of express legislative provision - the scheme of service is part of delegated legislation - authorising his promotion by two grades at a time, could not and did not have a legitimate interest.

20 Another reason for which the applicant has no locus standi in respect of the promotion of interested party Kourouniades to the post of Section Head is that he did not possess the qualifications prescribed in the scheme of service. All paragraphs of the scheme of service (Exhibit «C») for the post of Section Head («Τμήμα Αρχής») require satisfactory service in the post of Deputy Section Head or in a post of the same scale with analogous duties of a duration of 3-7 years, depending on the academic qualifications of a candidate - (See paragraphs 2 (b) (ii), 2(c) (iii) and Notes 1 and 2).

30 The applicant is the holder of a degree of the University of Salonica, qualification (a) in paragraph 2 of the scheme of service. This, however, by itself is not sufficient: it must be coupled with satisfactory service of not less than three years, as aforesaid, in the post of Deputy Section Head or in a post with the same salary scale and analogous duties.

35 According to the jurisprudence of this Court - (*The Republic v. Katerina Pericleous and Others* (1984) 3 C.L.R. 557) - a candidate for a post advertised must possess the qualifications at the last date for the submission of the applications - in this case 13.10.84.

The applicant lacked the qualification of satisfactory service in the post of Deputy Section Head or in a post of the same scale and analogous duties. He was a Clerk, 1st Grade, receiving the salary

Scale 7.

For the reasons aforesaid he has no legitimate interest in the decision of the promotion to the post of Section Head of Marios Kourouniades; he has no locus standi and the Court has no jurisdiction to entertain the recourse in respect of this promotion and to that extent the recourse will be dismissed. 5

The applicant was fully qualified for the post of Deputy Section Head.

It was submitted by the applicant and later by the advocate on his behalf that the sub-judice decision is void and of no effect as it was made under invalid rules or regulations as in the process of the taking of such decision a Joint Advisory Selection Committee, consisting of members of the Authority and of the Trade Union, formed and acting in accordance with regulations made under Clause 24(1) (γ) of the Collective Agreement, 1974 - 75, between the respondent Authority and the Union, participated, and in the alternative that the promotion was effected without rules or regulations made, as provided by the Public Corporations (Regulation of Personnel Matters) Law, 1970 (No. 61 of 1970). 10 15

Counsel for the respondent Authority admitted that regulations for the Joint Advisory Selection Committee were made pursuant to the Collective Agreement, which were neither approved by the Council of Ministers nor published in the Official Gazette but he argued that the part taken by the Selection Committee is such that did not taint with illegality the sub-judice decision as that Committee simply made recommendations and later a Sub-Committee on matters of personnel of the Authority dealt with the matter and ultimately the Board of the Authority took the sub-judice decision. 20 25

A collective agreement does not create rights or obligations in public law - (*Georghios Mavrommatis and Others v. Land Consolidation Authority*, (1984) 3 C.L.R. 1006). 30

The respondents in arriving at the sub-judice decision took into consideration, inter alia, the «common suggestions» and «the common document» of the Selection Committee established under the aforesaid regulations. I am unable to say to what extent this recommendation influenced the Authority in reaching the sub-judice decision. The regulations setting up the said Committee are plainly invalid - (*Kofteros v. Electricity Authority of Cyprus* (1985) 35

3 C.L.R. 394; *Pantelis Antoniadou v Electricity Authority of Cyprus* (1985) 3 C.L.R. 458).

For these reasons the sub-judice decision for the promotion of interested party Garbis Kassardjian to the post of Deputy Section  
5 Head will be annulled

There is a further reason for annulment. The respondent Authority with the coming into operation of the Constitution of the Republic was stripped off of all power vested in it with regard to personnel matters, appointment, promotion, etc., of officers or  
10 servants of the Authority which vested in it by the Electricity Development Law, Cap 171. Due to the emergency and the vacuum that resulted from the non-functioning of the Public Service Commission envisaged by the Constitution and the establishment by Law No 33/67 of a Public Service Commission with jurisdiction limited to the civil service proper, the Public Corporations  
15 (Regulation of Personnel Matters) Law, 1970 (No 61 of 1970) was enacted. Section 3 thereof conferred on the Authority power to appoint, confirm appointment, emplace personnel, promote, transfer, etc. This power cannot be validly exercised unless the  
20 prerequisites provided by the Law are complied with. Non-conformity with the empowering provisions of the Law renders any decision taken invalid.

As no rules or regulations were made governing the exercise of such power, the Authority could not validly exercise competence  
25 and the sub-judice decision is null and void.

It is with satisfaction that the Court noted that the respondents issued the Electricity Authority of Cyprus (Conditions of Service) Regulations, 1986, which, after approval by the Council of Ministers and the House of Representatives, were published in the Official Gazette of 27 12 86 Supplement No 3, page 897  
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For the aforesaid reasons the recourse against the promotion of Marios Kourouniades to the post of Section Head is hereby dismissed and the decision of the promotion of interested party Garbis Kassardjian to the post of Deputy Section Head is declared null  
35 and void and of no effect whatsoever.

Let there be no order as to costs.

*Promotion of interested party  
Kassardjian annulled. Recourse  
against interested party  
Kourouniades dismissed.  
No order as to costs.*

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