

1988 July 14

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ELENI LAMBROU AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE PUBLIC SERVICE COMMISSION,

2. THE MINISTRY OF HEALTH,

Respondents.

(Case No. 449/87).

5 *Public Officers—Law 127/86—Applicants "posted", but not "seconded", in order to perform duties of a health visitor—For this reason, their claim for appointment as health Visitors 1st Grade, is not covered by said law—The State Officers (Temporary Regulating Provisions) Law, 1975 (Law 54/75)—It has no bearing in this case.*

The facts of this case need not be summarized. The outcome of the recourse, whereby the applicants impugned the refusal to appoint them in the aforesaid post, depended on the interpretation of Law 127/86.

Recourse dismissed.

No order as to costs.

10 **Recourse.**

Recourse against the refusal of the respondents to appoint applicants to the post of Health Visitor 1st Grade under the provision of Law 127 of 1986.

15 *A.S. Angelides, for the applicants.*

A. Papisavvas, *Senior Counsel of the Republic*, for the respondents.

Cur. adv. vult.

A. LOIZOU P. read the following judgment. By the present recourse the applicants seek a declaration of the Court that the act of the respondent Commission by which the application of the applicants for appointment to the post of Health Visitor 1st Grade is null and void and with no legal effect. 5

The applicants by their letter dated the 3rd February 1987 asked the respondent Commission to appoint them to the post of Health Visitor 1st Grade in view of the provisions of Law No. 127 of 1986 advancing for the purpose the following arguments: 10

(a) They had long and prefect service at the special duties of Health Visitor;

(b) they were posted in the School Medical Service so that there would be a responsible qualified and select team of Health Visitors; 15

(c) they had special training;

(d) they were detached from the ordinary functions of their service as nursing sisters , and, 20

(e) they were always assured that they would be absorbed organically in the posts now published for the first time and which were for a long time under consideration.

The contents of the letter in question were communicated to the Director of Medical and Public Health Services for his comments. The Director by his letter dated the 11th March 1987 (Appendix 3) informed the respondent Commission that the said nursing sisters were posted and not seconded in order to perform duties of a Health Visitor. The reason for such posting was that the Service 25

believed and continues to believe that it was necessary to have their services offered to the School Medical Service of the Department. The post of a Nursing Sister is on the same salary scale as that of a Health Visitor 1st Grade and at their posting in the School Medical Service there was no post of Health Visitor 1st Grade established by Law.

Furthermore the respondent Commission sought the advice of the Attorney - General of the Republic on the point whether the said officers were covered by the provisions of Law No. 127 of 1986 taking into consideration that no act of secondment had been made by the respondent Commission. In response to the above question the Deputy Attorney - General of the Republic by his letter dated the 13th April 1987 (Appendix 5) gave the opinion that under the circumstances the prerequisites of the said Law were not satisfied given that the said officers had not been seconded to the post of Health Visitor 1st Grade as required expressly by s. 291 of the Law.

The respondent Commission by its letter dated the 6th May 1987 informed the applicants of the opinion of the Deputy Attorney - General observing at the same time that in accordance with the same Law the appointment of an officer is made "on the basis of the lists of candidates for appointment which were placed before the House of Representatives" and that the names of his clients had not been included in the lists placed before the House of Representatives.

It is the case for the applicants that the respondent Commission acted under a misconception of law. The misconception is contained in the letter of the respondent Commission of the 6th April 1987 (Appendix 4) by which it asked the opinion of the Attorney - General. In it s. 2(1) of the aforesaid Law is mentioned and in particular the interpretation of the term "seconded officers". At the same time it ignored, however, the provisions of s. 2(1) of The State Officers (Temporary Regulating Provisions) Law, 1975 (Law No. 54 of 1975) in which the term of State Officer", is defined as Public Officer within the meaning of Law No. 33

of 1967 and its s. 2(2) refers for its interpretation to this latter Law. Moreover under s. 3(1) (a) of Law No. 54 of 1975 the power to transfer or to second Public Officers for the discharge of any other duties in any other service, depending on its needs, can be done by other organs than the Public Service Commission. Therefore, there is power of secondment or transfer by another organ. 5

It has to be noted that under this provision it is the Minister of Finance or the Director - General of that Ministry duly authorized that could act thereunder beyond the powers of the Public Service Commission. 10

A perusal of Law No. 54 of 1975 shows that it has no bearing whatsoever in the case in hand as irrespective of any other consideration there has not been any action by the Minister of Finance or by his Director General nor has been shown that these applicants could not be otherwise engaged in accordance with their ordinary duties and responsibilities. In the instant case the applicable law is Law No. 127 of 1986, and its prerequisites have not been satisfied and therefore the applicants cannot bring their case within its ambit. 15 20

I need not deal at length with the ground of discrimination as equality before the Law in paragraph 1 of Article 28 entails equal treatment of all those who are found to be in the same situation, and the applicants were not.

For all the above reasons the recourse fails and is hereby dismissed but in the circumstances there will be no order as to costs. 25

*Recourse dismissed.
No order as to costs.*