

1988 July 26

[KOURRIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

(1) IOANNIS K. IOANNIDES,

(2) CHRISTAKIS CHAR. CHRISTOFI,

Applicants,

v.

THE CYPRUS TELECOMMUNICATIONS AUTHORITY,

Respondents.

(Consolidated Cases Nos. 521/87 & 568/87).

5 *Public corporations—Promotions—The Cyprus Telecommunications Authority—The Cyprus Telecommunications Authority General Regulations, 1982, Regs. 10 (5) (e) and 24 (7)—Appointment and promotion of personnel by a body other than the Board—Ultra vires section 10 of Cap. 302, as amended—Polycarpou and Another v. CYTA (1988) 3 C.L.R. 1461 followed.*

10 *Public Corporations—Promotions—The Cyprus Telecommunications Authority—Vacancies in the post of section head—Respondents considered vacancies as being vacancies in different branches and specialization—A course contrary to the regulations—The Cyprus Telecommunications Authority General Regulations, 1982, Regs. 4 (3) (B) and 8 (1) (B) (a)—Tillirides v. CYTA (1987) 3 C.L.R. 2071 adopted.*

15 *Public Corporations—Promotions—The Cyprus Telecommunications Authority—The Cyprus Telecommunications Authority General Regulations, 1982, Reg. 10 (7), (8); (9), (10) and (13)—Failure to compile promotion tables—Ground for annulment.*

The facts of this case sufficiently appear in the judgment of the Court.

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

Cases referred to:

Polycarpou and Another v. CY.T.A (1988) 3 C.L.R. 1461;

Vakis v. The Republic (1985) 3 C.L.R. 534;

Tillirides v. CYTA (1987) 3 C.L.R. 2071;

Tillirides v. CY.TA. (1987) 3 C.L.R. 920;

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Alvanis v. CYTA (1985) 3 C.L.R. 2695.

Recourses.

Recourses against the decision of the respondents to promote the interested party to the post of Section Head (Administrative Personnel) in preference and instead of the applicants.

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A.S. Angelides, for the applicant in Case No. 521/87.

I. Typographos, for applicant in Case No. 568/87.

A. Hadjioannou, for respondents.

KOURRIS J. read the following judgment. The applicants challenge by this recourse the validity of the decision of the respondent authority to promote the interested party Lambros Damianou to the post of Section Head (Administrative Personnel) (Tomearchis) instead of and in preference to the applicants.

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The post in question is a promotion post and before the sub justice decision the applicants and the interested party were holding the post of Subsection Head (Υποτομέτρης).

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The Personnel Committee met on 22.5.1987 to consider the question of promotions and they selected the interested party to fill the vacancy under Regulation 54 (2). The recommendation about the interested party was made on the basis of Regulation 56

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(7) (c).

The General Manager of the respondent authority by his decision dated 25.5.1987 confirmed the promotion of the interested party to the post in question.

5 The applicants, feeling aggrieved, filed the present recourses against the sub judice decision and they based their recourses on the following grounds:

10 (1) Regulations 10 and 24 of the Cyprus Telecommunications Authority, (General Regulations 1982) by virtue of which the promotion was made, are ultra vires the enabling section 10 of the Inland Telecommunications Service Law, Cap. 302 (as amended);

(2) The sub judice decision was taken in breach of the said regulations.

15 The breach resulted from the action of the respondents to divide the post to be filled and group them according to the different branches of the technical services and proceed to make the promotions according to that division which limits the selection of candidates according to specialization.

20 (3) Failure to compile promotion tables in accordance with the provisions of Regulations 10 (7), (8), (9), (10) and (13).

(4) Invalidity of confidential reports considered by the respondents for lack of compliance with the provisions of Regulation 23 (4).

25 (5) The sub judice decision is challenged for failure on the part of the respondents to pay due regard to the superior qualification for promotion of the applicants compared to the interested party.

With regard to ground 1, where the comparison is that the said regulations are ultra the enabling law, the question which falls for

determination is whether Regulations 10 (5) (b) and 24 (7) that provide for the appointment and promotion of personnel by a body other than the Board of the Authority is ultra vires the law.

This issue was expounded by Pikis, J. in *Andreas Polycarpou and Another v. The Cyprus Telecommunications Authority*, (1988) 3 C.L.R. 1461, concluding that the said Regulations are ultra vires the enabling section 10 of Cap. 302 (as amended). I fully agree with that decision and I adopt it and I have nothing useful to add and I also hold that Regulations 10 (5) (b) and 24 (7) of the Cyprus Telecommunications Authority, General Regulations 1982 are ultra vires the enabling section 10 of Cap. 302 (as amended) regarding the promotion and appointment of personnel by a body other than the Board of the Authority and consequently invalid rendering the sub judice decision defective and is hereby set aside. The provisions of Law 23/62 are irrelevant to the validity of the Regulations in question which is also tackled by Judge Pikis in his Judgment.

I propose now to examine the issue whether the sub judice decision would again be defective for breach of the Regulations themselves, assuming that the Regulations are valid, which is raised by ground 2 above. This point was again tackled in *Polycarpou and Another* (supra) and was found to be contrary to the principles adopted in the case of *Vakis v. The Republic* (1985) 3 C.L.R. 534 and *Tillirides v. C.Y.T.A.* (1987) 3 C.L.R. 2071.

In the latter case Savvides, J. held that the respondents wrongly and contrary to Regulation 4 (3) B considered the vacancies as being vacancies in different branches and specialization, depriving thus the applicant of the opportunity of being compared with the interested parties. He also held that this Regulation should be read together with Regulation 8 (1) B (a). I also fully agree with the above decisions and I adopt them and I also find that the division of personnel eligible for promotion into categories other than those specified by the law is in breach of the Regulations and in the result the recourse also fails on this issue.

I shall now deal with the issue of the promotion tables. Regulations 10 (7), (8), (9), (10) and (13) provide for the compilation of promotion tables every year stating the claims of personnel to promotion. No promotion tables were prepared in this case relevant to the expectation of eligible candidates to promotion, a fact that renders the promotions effected in the absence of them abortive. This issue was also dealt with by Pikiis, J. in the case of *Georghios Tillirides v. C.Y.T.A.* (1987) 3 C.L.R. 920 where at p. 925 he stated:

"To my comprehension, the relevant provisions of Regulation 10 aim to establish an essential prerequisite for the valid exercise of the power to promote, intended to forewarn personnel of their chances of promotion and safeguard their right to object in time with a view to eliminating errors or abuse of power in the compilation of the tables. In the absence of evidence that failure to heed the relevant provisions of Regulation 10 had no noticeable effects on the sub judice decision, the omission must be treated as consequential and the decision is liable to be set aside on that additional ground as well."

I now propose to deal with ground 4 with regard to the confidential reports. Counsel for the applicants argued that the confidential reports, which form part of the files of the candidates and were taken into consideration by the respondents were made in breach of the provisions of Regulation 23(4) in that the administrative board of the respondent did not take any decision as to the form of the reports and the officers responsible for making them.

In the case of *Alvanis v. C.Y.T.A.* (1985) 3 C.L.R. 2695 the promotions were annulled on this ground but after the decision of the Alvanis case the respondents complied with the Regulations and this appears from exhibit A in both recourses. Therefore, this ground fails.

In the light of the above, I do not propose to examine whether the applicants were strikingly superior to the interested party.

In view of the above, the sub judice decision is declared pursuant to paragraph 4(b) of Article 146 of the Constitution to be void and of no effect whatsoever. In the exercise of my discretion, I make no order for costs.

Sub judice decision annulled. 5
No order as to costs.