

1988 August 29

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS HADJIVASSILIOU AND ANOTHER,

Applicants,

v.

THE CYPRUS TELECOMMUNICATIONS AUTHORITY,

Respondents.

(Cases Nos. 497/87 and 561/87).

*Public Corporations—Cyprus Telecommunications Authority—Promotions—
Effected by the Board of Personnel, which derived power from the Cyprus
Telecommunications Authority (Personnel) (General Regulations) 1982
(Not. 220/82), Regs. 10(5) (e) and 24A—These regulations are ultra vires
the law—Polycarpou and Another v. CYTA (1988) 3 C.L.R. 1612 and
Demetriades and Others v. CYTA (1988) 3 C.L.R. 1589 adopted—
Promotions annulled.*

The ground for the annulment of the sub judice promotions is sufficient-
ly indicated in the headnote.

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

Cases referred to:

Polycarpou and Another v. CYTA (1988) 3 C.L.R. 1612.

Demetriades and Others v. CYTA (1988) 3 C.L.R. 1589.

Recourses.

Recourses against the decision of the respondents to promote the interested parties to the post of Service Supervisor B (Financial Personnel) in preference and instead of the applicants.

A. S. Angelides, for the applicants.

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A. HadjiIoannou, for the respondents.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicants in both recourses challenge the promotion of the interested parties to the post of Service Supervisor B' (Προϊστάμενος Υπηρεσίας B) (Financial Personnel) in the Cyprus Telecommunications Authority.

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By recourse No. 497/87 the promotion of two interested parties, namely George I. Christodoulou and Andreas I. Pontikou is challenged whereas by recourse No. 561/87 the promotion of two additional parties, namely, Ioannis Stassi and Andreas K. Georghiou is challenged.

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The two cases were heard together in view of the fact that they present common questions of both law and fact.

All parties were holding at the material time the post of Clerk Supervisor (Επιθεωρητής Γραφείου).

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On the 21st May, 1987, the Board of Personnel of the Authority met for the purpose of filling five vacancies in the post of Service Supervisor B' and after considering the particulars of the candidates eligible for promotion to the above post, selected the four interested parties for promotion to an equal number of vacancies. The promotions were approved by a decision of the General Manager of the Authority dated the 25th May, 1987. The applicants, who were placed by the Board of Personnel on the short

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list but were not finally selected for promotion, filed the present recourses.

The legal grounds on which counsel for applicants based his argument are that:

5 1. The Regulations on the basis of which the promotions were made are ultra vires the Law.

2. The service reports of the candidates on which the respondents relied in reaching the sub judge decision were irregularly prepared.

10 3. The respondents wrongly divided the vacancies and grouped them under different branches thus limiting the selection of candidates according to specialization.

4. The applicants were better qualified than the interested parties. And

15 5. The schemes of service for the sub judge post were never published.

With regard to the first ground counsel for the applicants argued that the Law does not confer power on any other body than the Authority itself to effect promotions and such power cannot be delegated to another body in the absence of any specific provision in the Law to this effect. As a result Regulation 10(5) (b) which gives power to the Board of Personnel to promote a certain class of officers is ultra vires the Law as is also Regulation 24A which provides for the setting up and functioning of such Board.

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The relevant Regulations are the Cyprus Telecommunications Authority (Personnel) (General Regulations) 1982 (Not. 220/82), which were issued under section 43 of the Inland Telecommunications Service Law, Cap. 302.

The Regulations with which we are concerned are Regulations 10 and 24 of the Regulations which regulate the promotions and the functioning of the Service Boards respectively.

The validity of the same Regulations was considered by this Court in two recent judgments. Thus, in the case of *Andreas Polycarpou & Another v. The Cyprus Telecommunications Authority* (1988) 3 C.L.R. 1612 Pikiis, J. found that Regulations 10(5) and 24 are ultra vires the enabling Law in that the respondent has no power, under the provisions of the Law, to delegate authority in respect of promotions to another subordinate body or organ. 5 10

The other case is the case of *Nicos Demetriades & Others v. The Cyprus Telecommunications Authority* (1988) 3 C.L.R. 1589. In that case Stylianides, J., in delivering his judgment, made a detailed and extensive reference to the legal background and came to the conclusion that Regulations 10(5) (b), (7) (a) and 24A are beyond the scope of the enabling Law, that is ultra vires the Law. 15

I am in full agreement with the views expressed by my learned brothers in the aforesaid cases. 20

Section 10 of Cap. 302 gave power to the Authority to appoint its personnel, including the General Manager and the Secretary. After the Constitution and in order to bring the Law into conformity with its provisions, this section was repealed and replaced by section 4 of Law 25/63 with the result that the task of appointing and promoting servants of the Authority was entrusted to the Public Service Commission. After the enactment of Law 33/67 the power of the Public Service Commission was limited to public officers only, thus leaving a vacuum in respect of the powers of appointments and promotions concerning other authorities. As a result the Public Corporations (Regulation of Personnel Matters) Law, 1970, (Law No. 61/70) was enacted which conferred on the Authorities concerned the power of appointing and promoting their officers. Thus, the power of appointment is now en- 25 30

trusted to the respondent Authority.

5 The Authority, in the exercise of the powers vested in it by s.43 of the Law issued the Regulations in question in 1982. Regulation 10(5) provides that except in the case of promotions within the Highest Personnel, the promotions are to be effected by the Boad of Personnel of the Authority. Also Regulation 24A provides for the setting up and functioning of the Service Boards of the Authority.

10 In the present case the promotions were made by the Board of Personnel, under Regulation 10(5) (b) and were approved by the General Manager, as provided by Regulation 24A(7).

15 Although by s. 10A, which was introduced by s. 4 of Law 25/63, power is given to the Authority to delegate to any of its members any of the functions or administrative powers conferred in it "δυνάμει του παρόντος Νόμου" (on the basis of this Law) I find that such power does not extent to entrusting the power of appointment or promotion to a body other than its own members and in any event the power to appoint, promote etc. was not conferred on the respondent either by Cap. 302 or any of its amend-
20 ing laws, but by Law 61/70, which is a separate and distinct Law.

25 On the basis of the above I find that Regulations 10(5) (b), 10(7) and 24A are ultra vires the Law. As a result the sub judice promotions which were effected on the basis of the above Regulations have to be annulled. In view of my finding I find it unnecessary to deal with the other points raised.

In the result these recourses succeed and the sub judice promotions are hereby annulled. There will be no order for costs.

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