

1988 September 26

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PANAYIOTA KOKKINOY,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION.

Respondent.

(Case No. 788/86).

Legitimate interest—Promotions of public officers—One of the two interested parties later promoted to sub judge post from a date prior to the sub judge promotion—Vacancy thus created filled by promotion of applicant as from date of sub judge promotion—Such promotion of applicant impugned by a recourse, which is still pending—Whether applicant still possesses a legitimate interest to pursue this recourse—Question determined in the affirmative.

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Practice—Recourse for annulment—Promotion of public officers—Legitimate interest of applicant found as still subsisting only because of pendency of another recourse against the promotion of applicant to the sub judge post—Whether this recourse should be adjourned sine die or dismissed, subject to a right of reinstatement—Neither course followed—Directions that recourse be heard on its merits.

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By means of this recourse the applicant impugned the validity of the promotion of the two interested parties to the post of Senior Chemist as from 1.9.86. One of the two interested parties was later promoted to the same post from a date prior to 1.9.86. The vacancy, which occurred, was filled by applicant's promotion retrospectively as from 1.9.86. Applicant's such promotion was challenged by another recourse. The issue that arose for determination is whether the applicant still possesses a legitimate interest to pursue this recourse.

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Held: (1) Had it not been for the pendency of the recourse against applicant's promotion, the pursuit of these proceedings would have been superfluous. The pendency of the recourse against applicant's promotion sustains his interest to pursue this recourse. (*Bagdades v. Ploussiou* (1984) 3 C.L.R. 1556 followed).

(2) The Court is disinclined to adjourn the case sine die or dismiss the recourse, subject to a right of reinstatement.

Directions accordingly.

Cases referred to:

- 10 *Bagdades v. Ploussiou* (1984) 3 C.L.R. 1556;
Payiatas v. The Republic (1984) 3 C.L.R. 1231;
Vakis v. The Republic (1985) 3 C.L.R. 534;
Kikas and Others v. The Republic (1984) C.L.R. 852;
Ioannou v. C.T.O. (1986) 3 C.L.R. 2543.

15 **Recourse.**

Recourse against the decision of the respondents to promote the interested parties to the post of Senior Chemist in the Department of Health in preference and instead of the applicant.

A. *Pandelides*, for the applicant.

20 P. *Hadjidemetriou*, for the respondents.

Cur. adv. vult.

25 PIKIS J. read the following judgment. It is imperative to narrate the facts and keep them in clear perspective in order to appreciate the implications of the issue that has to be decided, namely, whether the recourse has been sapped of its subject matter.

The applicant and the two interested parties were candidates for promotion to the post of Senior Chemist in the Department of Health. The interested parties were promoted in preference to the applicant. The date of their promotion was 1/9/86. The decision to appoint the interested parties is the subject matter of this recourse. During the pendency of the proceedings a series of developments occurred that must be detailed in order to comprehend their effect.

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In the context of re-examination of an earlier administrative act of the respondents, one of the two interested parties was promoted to the position of Senior Chemist, effective from a date prior to 1st September, 1986. Guided by this reality, the respondents proceeded to fill the post that had been allocated to him, by virtue of the sub judice decision that was treated as having not been filled by the promotion of one of the two interested parties. No doubt the respondents sought to fill the gap that was created by the retrospective promotion of the interested party to an earlier vacancy. The Public Service Commission did not address themselves anew to facts, nor did they revoke the sub judice decision. They merely gauged the gap and supplemented their decision by filling the second vacancy to which they appointed the applicant. In effect, we have three acts that must be juxtaposed in order to determine whether the grievance of the applicant was remedied:

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(A) The sub judice decision;

(B) The decision entailing the retrospective promotion of one of the two interested parties; and

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(C) the filling of the gap left by the last-mentioned act by the retrospective promotion of the applicant to the post of Senior Chemist, effective from 1/9/86.

Counsel for the respondents submitted that the recourse has been abated or, more accurately, that applicant has forfeited any legitimate interest to challenge the sub judice decision, a decision duly supplemented by his retrospective promotion to the post to

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5 which he sought to be promoted. Counsel for the respondents maintained that his client has an interest to pursue the proceedings in view of the challenge raised to his promotion by a recourse filed within the time limited by para. 3 of article 146. If the pursuer of that recourse is successful, his promotion will be annulled, whereas he will have lost every right to challenge the decision, subject matter of this recourse. In one sense his interest in pursuing the present proceedings is contingent on the outcome of the challenge of his promotion. In comparable circumstances, the Full Bench of the Supreme Court, as counsel submitted, acknowledge an interest to the applicant to pursue the proceedings. The decision is that of *Bagdades v. Ploussiou*.* The ratio of the decision in *Bagdades*, supra, is that satisfaction of the grievance of an applicant in proceedings under article 146.1, does not bring about disappearance of his interest to pursue the proceeding if the act, by virtue of which his grievance was remedied, is at issue in proceedings raised under article 146.1.

20 It is settled that the revocation of an act, subject to judicial review under article 146, does not automatically entail the dismissal of the recourse.** It may be pursued to conclusion for the purpose of founding a right to pursue a civil action under para. 6 of article 146. Here, the applicant does not wish to continue the proceeding for that purpose. He merely wishes to seek the annulment of the sub judice act in case such course becomes necessary by the outcome of the recourse directed against his subsequent promotion.

30 Had it not been for the recourse mounted against his promotion, pursuit of the proceeding would be superfluous. The decision in *Bagdades*, supra, reflects the realities of our judicial system applicable to the review of administrative action, and accords

* (1984) 3 C.L.R. 1556.

** (See, inter alia, *Payiatis v. Republic* (1984) 3 C.L.R. 1231; *Vakis v. Republic* (1985) 3 C.L.R. 534; *Kikas and Others v. Republic* (1984) 3 C.L.R. 852; *Ioannou v. C.T.O.* (1986) 3 C.L.R. 2543).

with the intrinsic interests of justice. Necessarily, I must conclude that the pendency of the proceedings against his promotion sustains his interest in the pursuit of the present recourse. Nevertheless, the course suggested by counsel, that is, to adjourn the case sine die pending the outcome of other action, is not one agreeable to the Court. It will entail delay at a time when all facts relevant to judicial review are available and can be pondered; and, as in every case, the time factor is essential for the due appreciation of the facts of the case. I am equally disinclined to dismiss the recourse subject to a right of reinstatement on the application of the pursuer, a course that would likewise bring about the same results as the adjournment of the case sine die.

Finding, as I do, that the applicant has an extant interest in the pursuit of her recourse, I direct that the respondents do file their written address, as directed by Loris, J., who originally dealt with the case. The address to be filed within one month. Thereafter, applicant will be at liberty to file an address in reply within fifteen days. Certainty in the hierarchy of the Administration is, it must be appreciated, an important factor that cannot be overlooked, as well as the right of the remaining interested party to know the outcome of a judicial proceeding affecting his position in the civil service.

The case is fixed for further directions on 17/12/88 at 8.45 a.m.

Order accordingly.