

1988 March 21

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

EFTERPI EFSTRATIOU PAPAKYRIAKOU,

Applicant

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE EDUCATIONAL SERVICE COMMISSION AND/OR
2. THE MINISTRY OF EDUCATION,

Respondents.

(Case No. 674/86).

5 *Educational Officers—Appointments on contract—The Educational Officers on Contract (Appointment to Posts in the Public Service) Law, 1985 (Law 161/85, section 3(1)—Whether the power of the Commission thereunder to make appointments on contract is limited to those already serving on contract—Question determined in the negative.*

10 *Educational Officers—Appointment on contract—The Educational Officers on Contract (Appointments to Posts in the Public Service) Law 1985 (Law 161/85), section 3(1)—Appointments made on basis of the date on which the candidates obtained their Diplomas, the grades of their diplomas and the age of the candidates—Such criteria are the same as those in Regulation 5 (2) of the Regulations of 1972, which has been declared void for unreasonableness in Savva v. The Republic (1986) 3 C.L.R. 445—It follows that for the same reason the sub judice decision has to be annulled.*

15 *Educational Officers—Appointments on contract—The Educational Officers on Contract (Appointments to Post in the Public Service) Law, 1985 (Law 161/85)—Seniority—One day's seniority—In a case of a contract of short duration cannot have any bearing.*

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

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

Cases referred to:

Savva v. The Republic (1986) 3 C.L.R. 445.

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Recourse.

Recourse against the decision of the respondent to appoint on contract the interested parties to the post of teacher of Commercial subjects in preference and instead of the applicant.

A. S. Angelides, for the applicant.

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P. Clerides, for the respondent.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicant challenges, by the present recourse, the decision of the respondents to appoint, on contract, the interested parties, namely, Christos Vassiliou, Constantia Stylianou and Lambros Djordjis to the post of teacher of Commercial subjects instead of and in preference to her.

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The applicant graduated the Higher School of Commerce, Athens, in 1974, and was enrolled on the list of candidates wishing to be appointed as teachers.

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By letters dated 3rd October and 6th October, 1986, the Ministry of Education conveyed to Respondent No. 1 the needs of schools in commercial subjects, and requested the appointment of teachers in order to cover the said needs.

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The respondent Educational Service Commission (to be referred to as the E.S.C.), met on 11th October, 1986, and after

5 taking into consideration the fact that the lists of appointees had been declared as ultra vires the law by the Court, appointed on contract, as from the 13th October and for a period of 15 days, a number of educationalists, on the basis of section 3(1) of Law 161/85. It is stated in the minutes of the Commission that the selection of the appointed teachers was made after consideration of the cases of all candidates interested and on the basis of the date on which they obtained their Diplomas, the grade of the Diploma and their age. One out of the five teachers so appointed for Commercial subjects was interested party No. 2.

10 As two of the teachers appointed for the above subject did not accept their appointment, the respondent E.S.C. met again on the 13th October, 1986 and revoked their appointments. It then proceeded to appoint interested party No. 3 for a period of 15 days as from 15.10.1986 on the basis of the criteria set down in its previous meeting of 11th October. In the place of the other teacher who did not accept his appointment, the E.S.C. decided "in view of the necessity for the immediate covering of educational gaps to appoint temporarily on contract as from 14.10.86 for a period of 15 working days," the applicant in order to enable itself to get in contact with those of the candidates interested who had priority on the basis of the criteria set down by it which are mentioned above.

25 In view of the expiration of the above contractual appointments the E.S.C. met on the 31st October, 1986, and renewed for a further period of 15 days, the appointments of interested parties 2 and 3, but not that of the applicant. Instead, it proceeded to appoint as from 1st November, 1986, for a period of 15 working days, interested party No. 1, stating that "Mr. Vassiliou has priority over the other candidates on the basis of the criteria defined at the meeting of the Commission, dated 11.10.1986".

30 The applicant filed the present recourse challenging the above decision.

The first point raised by counsel for the applicant is that the ap-

pointment of interested party No. 1 was made contrary to the provisions of Law 161/85 since he was not, on the 31st October, 1986 an "educationalist on contract" within the meaning of the Law.

Counsel for the respondent argued, in respect of this point, that the law cannot be interpreted to mean that the power of the E.S.C. is limited in appointing on contract only those education- 5
alists who are already serving on contract. He pointed out that the contractual appointment of the applicant for 15 days was only 10
made until the E.S.C. would be able to study the cases of those having priority for appointments and make the necessary contacts with them.

The relevant Law applicable with regard to this ground is the Educational Officers on contract (Appointment to Posts in the Public Educational Service) Law, 1985 (Law 161/85). Section 3 15
(1) of this Law reads as follows:

"3. - Κατά παρέκκλιση από τις διατάξεις των περί Δημοσίας Εκπαιδευτικής Υπηρεσίας Νόμων του 1969 έως (Αρ. 2) του 1985 ή οποιουδήποτε άλλου Νόμου ή Κανονισμού ο οποίος αφορά στη δημόσια εκπαιδευτική υπηρεσία, σχετικά με τις μεθόδους και διαδικασίες πλήρωσης θέσεων στη δημόσια εκπαιδευτική υπηρεσία, η Επιτροπή δύναται κατά διακριτική εξουσία να προβαίνει σε διορισμούς εκπαιδευτικών λειτουργών με σύμβαση." 20

And the English translation.

("3. (1) In deviation to the provisions of the Public Educational Service Laws 1969 to (No. 2) 1985 or any other Law or Regulation concerning the public educational service, the Commission may within its discretionary power effect appointments of educational officers on contract.) 25
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Counsel for applicant relying on the combined effect of this section and the definition of "educational officers on contract" in

section 2(1) contended that the power of the E.S.C. to appoint on contract was restricted to those educational officers already serving on contract, which was not the case with interested party No. 1.

5 The definition of "educational officer on contract" in section 2 (1) of Law 161/85 is as follows: -

10 " εκπαιδευτικός λειτουργός με σύμβαση σημαίνει εκπαιδευτικό λειτουργό χωρίς διορισμό ο οποίος διορίστηκε στη δημόσια εκπαιδευτική υπηρεσία με σύμβαση σύμφωνα με τις διατάξεις του παρόντος Νόμου."

And the English translation:

15 "' Educational officer on contract' means an educational officer without appointment who was appointed in the public educational service on contract in accordance with the provisions of this Law".

20 I find myself unable to agree with the interpretation of the Law as suggested by learned counsel for the applicant. It is obvious from the wording of section 3(1) that it gives power to the E.S.C. to appoint educational officers on contract. And any educationalist so appointed becomes an "educational officer on contract" within the meaning of section 2(1).

25 The term "educational officer on contract" appears in section 3 (2), the purpose of which is to offer ordinary appointment to those educational officers serving on contract on the 1st December, 1985 and the term "educational officer on contract" is used in that context, and not for the purpose of limiting or restricting the power of the E.S.C. under section 3(1). This contention of counsel therefore fails.

30 The second ground raised on behalf of the applicant concerns the appointment of interested party No. 3. Counsel argued that the applicant was senior to him having been appointed as from the

14th October, 1986, whilst this interested party was appointed as from the 15th of the same month, that she also had excellent service and should therefore had been preferred to him.

I find this contention of counsel as completely groundless and I therefore dismiss it. The only thing I may add is that one day's seniority in a case of a contractual appointment of such a short duration as in the present case (15 days) cannot have any bearing on the case. 5

The last ground raised by counsel for applicant is that the criteria for selection set down by the E.S.C. on the 11th October, 1986, on the basis of which the sub judge appointments were made, are outside the context of the Law and more specifically s. 28 of Law 10/69. He contended that they are the same criteria contained in Regulations 5 and 10, of the 1972 Regulations, which were declared by the Court as ultra vires the Law, in the case of *Savva v. The Republic* (1986) 3 C.L.R. 445. 10 15

Counsel for the respondent argued that the E.S.C. took into account all relevant considerations and the appointments were not made on the basis of the date and grade of the Diploma and the age of the candidates alone. As regards interested party No. 1, counsel argued, he possesses the same qualifications as the applicant but having obtained them two years earlier than her, he had priority over her for appointment. 20

The criteria set down by the E.S.C. at its meeting of the 11th October, 1986, as appearing in the minutes, were as follows: 25

"Η επιλογή των πιο πάνω καθηγητών γίνεται ύστερα από μελέτη των περιπτώσεων όλων των ενδιαφερομένων για διορισμό και με βάση την ημερομηνία απόκτησης των απαιτούμενων για πρώτο διορισμό πτυχίου, το βαθμό του πτυχίου, και την ηλικία των ενδιαφερομένων." 30

It is obvious from the above that the date on which the candidates obtained their Diplomas, the grades of their diplomas and

the age of the candidates were major considerations in reaching the sub judge decision.

5 These criteria are the same with the criteria which appear in Regulation 5(2) of the 1972 Regulations (No. 205/72) and the Schedule thereto, which have been declared as ultra vires the Law and void for unreasonableness, in the case of *Savva v. Republic* (1986) 3 C.L.R., 445. The relevant part of the judgment in the aforesaid case appears at pp. 448 - 449 as follows: -

10 "In the light of the submissions of the parties I have carefully considered the issue of ultra vires of the relevant provisions of the aforesaid Regulations and I have reached the conclusion that the said provisions and, in particular, regulations 5 and 10 and the Appendix thereto, especially when applied together, are ultra vires Law 10/69 and particularly, sections 28 and 76, 15 thereof because the said section 28 of Law 10/69 enumerates exhaustively the prerequisites for appointment and section 76, under which the Regulations in question were made, does not empower the addition of the further prerequisite that the educationalists to be appointed should have priority for this purpose in accordance with a list of those eligible to be appointed, 20 which is prepared on the basis of the criteria set out in the Appendix to such Regulations.

25 As regards the matter of delegated legislation being ultra vires the statute under which it has been made I would add that the relevant principles have already been expounded in case - law of this Court and need not be repeated in this judgment once again (see, in this respect, inter alia, *Marangos v. The Municipal Committee of Famagusta*, (1970) 3 C.L.R. 7, *Spyrou (No. 2) v. The Republic*, (1973) 3 C.L.R. 627, *Stavrou v. The Republic*, (1976) 3 C.L.R. 66, *Michaeloudes v. The Republic*, (1979) 3 C.L.R. 56, *Menikos v. The Republic*, (1983) 3 C.L.R. 1130, and *Ethnikos v. K.O.A.*, (1984) 3 C.L.R. 1150).

I am, furthermore, of the opinion that the aforementioned

provisions of the Regulations in question, and, in particular, of the Appendix thereto, are void for unreasonableness, and, consequently, ultra vires, because they introduce some unreasonable criteria of priority for appointment which are clearly entirely incompatible with the paramount object of appointing the most suitable candidates. (see, inter alia, in this respect, *Avraam v. The Municipality of Morphou*, (1970) 2 C.L.R. 165, and *Angelides v. The Republic*, (1982) 3 C.L.R. 774).

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As I said earlier, the criteria on which the sub judge appointments were made, were basically the same as those contained in Regulation 5(2) and the Schedule to the Regulations of 1972, which have already been declared as ultra vires and void for unreasonableness. In view of the above I find that these criteria cannot be relied upon as the decisive factor, as has happened in the present case, since they are outside the context of the Law and the sub judge decision must, therefore, be annulled on this ground.

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In the result this recourse succeeds and the sub judge decision is hereby annulled. There will be no order for costs.

Sub judge decision annulled.
No order as to costs.

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