

1988 April 29

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRISTOS CHRISTOUDIAS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 590/86).

Legitimate interest—Public Officers—Decision adverse to legitimate expectation for assent in the hierarchical ladder.

5 *The Temporary Public Employees (Appointment to Public Positions) Law, 1985 (160/85)—Repugnant to doctrine of separation of state powers—Christoudia v. The Republic (1988) 3 C.L.R. 515 adopted.*

Constitutional Law—Equality—Constitution, Art. 28—The Temporary Public Employees (Appointment to Public Positions) Law, 1985 (Law 160/85)—Repugnant to Art. 28—Distinction between permanent and temporary employees—Cannot be supported by logic or experience.

10 *Constitutional Law—Separation of Powers—Christoudia v. The Republic (1988) 3 C.L.R. 515 adopted.*

15 The interested parties were appointed to the sub judge post in virtue of the aforesaid Law 160/85. The applicant, who was a permanent public officer, was not appointed, because he was not, at the material time, like the interested parties, a temporary employee. The applicant satisfied all the requirements of the scheme of service for the sub judge post.

Hence this recourse.

Held, *annulling the sub judice decision*:

(1) The interest necessary to sustain administrative review is not confined to a financial one. It is settled that a decision adverse to the legitimate expectations of a public officer for ascent in the hierarchical ladder of the service entitles him to seek its review. The applicant did have a legitimate expectation to submit a candidature for appointment to the post of Administrative Officer. He had the qualifications necessary for appointment. Moreover he had evinced his interest to compete for appointment as far back as 1983. 5 10

(2) Law 160/85 is unconstitutional for the reasons expounded in *Christoudia v. The Republic* (1988) 3 C.L.R. 515.

(3) Moreover, Law 160/85 is repugnant to Art. 28 of the Constitution. There is no logical or experiential justification for the distinction made between permanent and temporary employees who seek appointment to positions in the public service. 15

Broad as the power of the legislature is to classify the objects of the law, it must stop short of arbitrary distinctions such as cannot be supported in logic or experience.

Sub judice decision annulled. 20
No order as to costs.

Cases referred to:

Christoudia v. The Republic (1988) 3 C.L.R. 515.

Recourse.

Recourse against the decision of the respondent to promote the interested parties to the post of Administrative Officer in preference and instead of the applicant. 25

N. Loizou, for applicant.

A. Vassiliades, for the respondent.

Cur. adv. vult. 30

PIKIS J. read the following judgment. This is an application of Christos Christoudias for judicial review of the decision of the respondents to appoint the interested parties to the post of Administrative Officer (published on 4.7.1986). He complains that the P.S.C. arbitrarily excluded him from consideration for appointment notwithstanding the fact that he possessed the qualifications for appointment envisaged by the scheme of service.

Christos Christoudias joined the public service in 1963. In 1983 he was promoted to Clerical Officer; the same year he applied for appointment to the position of Administrative Officer and was one of the candidates for appointment or promotion to that position. As acknowledged he had the general and special qualifications necessary for appointment; that is, he had passed the special qualifying examination for appointment to the post of Administrative Officer.

The process of filling the post was discontinued at the end of 1983. The Administration chose to satisfy their personnel needs by the appointment of temporary personnel and the interested parties were appointed Administrative Officers on a temporary basis. They served in that capacity when the Temporary Civil Service (Appointment to Public Positions) Law 1985 was enacted (Law 160/85). The law made provision for the permanent appointment of temporary civil servants. It provided that temporary personnel employed at the time of the enactment of the law and who served in the capacity and were temporary members of the service on 31st December, 1984, should be appointed on a permanent basis provided they had (a) the qualifications for appointment, and (b) the formal requirements for appointment, to the public service. If they satisfied these requirements, the law stipulated their appointment should date back to the date of enactment of the law. The interested parties were employed in a temporary capacity at the material dates and moreover possessed at the time of their appointment by the P.S.C. the qualifications laid down in the scheme of service. Consequently, they were appointed Administrative Officers from the date of promulgation of the law.

The applicant challenged the decision as founded on an unconstitutional law. Similar arguments to those raised in *Christoudia v. Republic* (1988) 3 C.L.R. 515 were advanced in support of the proposition that Law 160/85 is unconstitutional. Therefore, the legal framework within which the appointments were effected was defective, exposing the sub judice decision to invalidity. The respondents supported the law as constitutional. Furthermore they doubted the legitimacy of the interest of the applicant to move the Court to review the decision here under consideration.

To mount an application for the review of administrative action, the pursuer must have a legitimate interest in the decision. The nature of his interest is specified by para 2 of Art. 146. To be justiciable the decision must adversely affect an immediate interest of the applicant and must further prejudice it directly. The interest necessary to sustain administrative review is not confined to a financial one. We need not review to any extent the principles governing the species of interest necessary to legitimize recourse to the Court. It suffices to mention that it is settled beyond doubt that a decision adverse to the legitimate expectations of a public officer for ascent in the hierarchical ladder of the service entitles him to seek review of the action prejudicing that expectation. The applicant did have a legitimate expectation to submit a candidature for appointment to the post of Administrative Officer. He had the general and special qualifications necessary for appointment (he passed the special examination in 1981). Moreover he had evinced his interest to compete for appointment as far back as 1983. In those circumstances he had a legitimate interest in the filling on a permanent basis of the post of Administrative Officer; more so as he had the formal qualifications necessary for joining the civil service. In fact, he was a member of the civil service. Consequently, the objection of the respondents to the justiciability of the recourse for lack of a legitimate interest must be dismissed.

In *Christoudia v. The Republic* (supra) it was decided that Law 160/85 is unconstitutional. Therefore, the decision, subject to review in that case, was annulled. Although a judgment of a Court of coordinate jurisdiction, be it of my own, is not binding

upon this Court, nothing heard in this case persuades me that its reasoning is in any way erroneous or that Law 160/85 can pass the test of constitutionality. For similar reasons to those given in the above decision, the law is found to be unconstitutional and the

5 sub judge decision is declared null and void. A copy of that decision is appended to this judgment and should be read as an integral part of it. In the case of *Christoudia v. The Republic* (supra) we left unanswered the question whether Law 160/85 was also un-

10 constitutional for breach of the principle of equality safeguarded by Art. 28.1 of the Constitution. The circumstances of this case make the resolution of that issue necessary in view of what appears to me to be manifestly unequal treatment between the applicant and the interested parties. The exclusion of the applicant from the list of eligible candidates was, in my judgment, arbitrary

15 and cannot be sustained. Applicant had the qualifications envisaged by the scheme of the service and like the interested parties he was a member of the service, albeit, on a permanent basis. I can find no logical or experiential justification for the distinction made between permanent and temporary employees who seek appointment to positions in the public service. The notion of equality under

20 Art. 28.1 has been explored by decided cases more than any other aspect of the fundamental rights and liberties of the subject guaranteed by the Constitution. It is unnecessary to refer to any decided cases, save to emphasize that they consistently support the thesis that the object of Art. 28.1 is to ensure intrinsic equality.

25 Broad as the power of the legislature is to classify the objects of the law, it must stop short of arbitrary distinctions such as cannot be supported in logic or experience. High as the burden invariably is to make out a case of unconstitutionality of the law, in this case it has been discharged. Mere contemplation of what happened, particularly the abandonment in 1983 of the process of filling the posts of Administrative Officer on a permanent basis, and subsequent confirmation of the interested parties who joined

30 the service after the discontinuance of that process on a temporary basis, suffices to show the magnitude of the breach of the principle of equality before the law and the Administration.

For all the above reasons the recourse succeeds. The sub judge decisions are, pursuant to Art. 146.4(b) of the Constitution, declared to be wholly void. Let there be no order as to costs.

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Sub judge decision annulled. No order as to costs.