

In the case of *Kraibuehler vs. Civil Service Commission*, 124 N. J. L. p. 99, the Supreme Court held:

"It is settled that positions within the civil service may be abolished and that employees under civil service may be separated from their positions for reasons of economy. *Santucci vs. Paterson*, 113 N. J. L. 192; *Byrnes vs. Boulevard Commissioners of Hudson County*, 121 Id. 497; *Gianettino vs. Civil Service Commission*, 120 Id. 531.

"Statutory provisions pertinent to civil service employees separated from the service without delinquency or misconduct on their part are R. S. 11:22-9 and R. S. 11:22-10.

"R. S. 11:22-9 provides:

"When any person holding an office or position under the classified service has been separated from the service because of reasons of economy or otherwise, * * * his name shall be placed upon a special eligible list, which list shall take precedence over all other civil service lists, and shall be entitled to reinstatement at any time thereafter in the same or any similar office or position of the same kind as that from which he was previously separated as soon as such an opportunity arise. * * *

"R. S. 11:22-10 provides:

"A person in the classified service whose position has been abolished for reasons of economy or otherwise * * * shall, with the approval of the commission, be demoted to some lesser office or position in the same department in the regular order of demotion and placed therein with the salary of pay attached. * * *"

"Under the first provision a person separated from the service has the right to have his name placed upon an eligible list for reinstatement when an opportunity arises; but there is no provision for displacing another employee. Under the second provision a person whose position has been abolished has, with the approval of the commission, the right to be demoted to some lesser office or position in the same department. The two statutory enactments were not passed at one time. The first was enacted as section 23 of chapter 156, Pamph. L. 1908, Comp. Stat., p. 3803, § 79, amended by chapter 128, Pamph. L. 1933 and chapter 11, Pamph. L. 1935. The second was enacted as section 1 of chapter 122, Pamph. L. 1916, 1924 Supp., § 144-98. The two overlap in their application and may, we think, be read together to the extent of deducing a legislative intent that where the right of demotion exists it is restricted to a demotion within the department within which the person has been employed. Aside from that the right of one who has been separated from the service or whose position has been abolished, for reasons of economy or other reason not grounded in his delinquency or misconduct, is to have his name placed upon a special eligible list with reinstatement at an appropriate time thereafter. Prosecutors have not been deprived of any right thus accorded them."

From an examination of the Civil Service Law, particularly Sections 11:22-9 and 11:22-10 and a consideration of the facts, I am of the opinion petitioners' claim to a demotion must be denied there being no position or employment of a similar class or character to which a demotion could be made, but that they are entitled to the