

1971
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GEORGHIOS
GAVRIEL
v.
REPUBLIC
(PUBLIC
SERVICE
COMMISSION
AND ANOTHER)

[TRIANTAFYLIDIS, P., STAVRINIDES, L. LOIZOU,
HADJIANASTASSIOU & MALACHTOS, JJ.]

GEORGHIOS GAVRIEL,

Appellant,

and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE PUBLIC SERVICE COMMISSION,
2. THE DIRECTOR OF THE DEPARTMENT OF
LANDS AND SURVEYS,

Respondents.

(*Revisional Jurisdiction Appeal No. 83*).

Public Officers—Promotions—Public Service Commission—Powers and duties of the Commission in considering eligibility for promotion of public officers under section 44 (1) (d) of the Public Service Law, 1967 (Law No. 33 of 1967)—Which section provides that no public officer shall be promoted unless “ he has not been punished during the preceding two years for any disciplinary offence of a serious nature ”—It is the duty of the Commission to evaluate itself the nature or seriousness of a disciplinary offence when, in applying the said statutory provision, it comes to decide on the eligibility for promotion of a public officer—In the instant case the respondent Commission proceeded to promote Mr. G. H. (the interested party) instead of and in preference to the applicant, notwithstanding that the former has been, on two occasions during the relevant period of two years tried summarily and severely reprimanded for gross negligence and indifference in the exercise of his duties—The Commission having treated the said interested party eligible for promotion under the said section 44 (1) (d), because it took the view that the said “ punishments in question were not of a serious nature ”—Thus, the respondent Commission appears to have been unduly influenced by the nature of the punishments imposed and, therefore, failed to discharge properly its duty to evaluate itself the nature of the disciplinary offences in respect of which the interested party has been punished—Moreover the Commission was not in a position to discharge duly and properly its said duty of evaluation, because it had not before it the relevant salient facts—Consequently, the sub judice promotion has to be annulled.

Public Service—Public officers—Promotions—Eligibility for promotion—Section 44 (1) (d) of the said Law No. 33 of 1967—Powers and duties of the Public Service Commission in that regard—See supra.

Public Service Commission—Powers and duties in respect of eligibility for promotion of a public officer under section 44 (1) (d) of the Public Service Law, 1967 (Law No. 33 of 1967)—See supra.

Promotions—See supra.

The appellant public officer appeals from a first instance decision of a Judge of this Court (reported in this Part at p. 193, *ante*) dismissing his recourse under Article 146 of the Constitution directed against the decision of the Public Service Commission whereby they promoted Mr. G. H. (the interested party) to the post of Senior Surveyor in the Department of Lands and Surveys in preference to, and instead of, himself.

The main ground of appeal is that in treating the interested party as eligible for such promotion, the Public Service Commission contravened section 44 (1) (d) of the Public Service Law, 1967 (Law No. 33 of 1967), which provides that no public officer shall be promoted unless “ he has not been punished during the preceding two years for any disciplinary offence of a *serious nature* ”. It is not in dispute that some time within the period of two years previous to his *sub judice* said promotion the interested party was on two occasions punished disciplinarily under sections 80 (a) and 81 of the said Law No. 33 of 1967 ; *i.e.* summarily by the appropriate hierarchically superior authority and not by the respondent Public Service Commission under section 82 of the Law : On May 7, 1969, and on January 27, 1970, he was severely reprimanded for gross negligence and indifference in the execution of his duties.

As it appears from the relevant minutes the Public Service Commission treated Mr. G. H. (the interested party) as being eligible for promotion because they took the view, after having “ considered the two punishments ” imposed on him (*supra*) “ during the last two years ”, that the “ *punishments in question* were not of a serious nature and, therefore, he could be considered for promotion in accordance with section 44 (1) (d) of Law No. 33 of 1967 ”.

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Allowing the appeal, setting aside the judgment appealed from, and annulling the aforesaid promotion of Mr. G. H. (the interested party), the Supreme Court :—

Held, (1) We are in agreement with the view of counsel for the appellant and for the respondent (with which counsel for the interested party did not, really, disagree) that it is incumbent on the Public Service Commission to evaluate themselves the nature and seriousness of a disciplinary offence when, in applying section 44 (1) (d) of the Law (*supra*), they have to decide on eligibility for promotion of a public officer.

(2) But in the instant case it is quite clear that the Commission were unduly influenced by the nature of the *punishments* imposed and that they did not discharge properly their duty of evaluating themselves the *nature* of the disciplinary offences in respect of which the interested party had been punished.

(3) Moreover, the Commission were not in a position at all to duly discharge their said duty because all they had before them in this connection were copies of two letters stating the charges, the fact that the interested party had been found guilty and the disciplinary punishments imposed. The Commission did not have before them the salient facts in relation to each of the two occasions in question (*supra*) and, consequently, they knew nothing of the circumstances in which the interested party, on each such occasion, had been guilty of gross negligence and indifference in the execution of his duties.

(4) Consequently, the administrative process by means of which the promotion of this interested party was made is vitiated because of the failure of the respondent Commission to act duly in accordance with the provisions of section 44 (1) (d) of the said Law No. 33 of 1967 (*supra*). It follows that such promotion has to be annulled. In view of the fact that the legal issue on which the case has been determined is a novel one there will be no order as to costs.

Appeal allowed. No order as to costs.

Appeal.

Appeal from the judgment of a Judge of the Supreme Court of Cyprus (A. Loizou, J.) given on 16th June, 1971, (Case No. 373/70) whereby applicant's recourse against the

promotion of the Interested Party, George HjiPanayiotou, to the post of Senior Surveyor in the Department of Lands and Surveys was dismissed.

L. Papaphilippou with *K. HjiMarcou*, for the applicant.

L. Loucaides, Senior Counsel of the Republic, for the respondents.

L. Cleridés, for the Interested Party.

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The judgment of the Court was delivered by :—

TRIANTAFYLLIDES, P. : The appellant appeals from a first instance decision* of a Judge of this Court by virtue of which there was dismissed his recourse (No. 373/70) against the promotion by the respondent Public Service Commission of George HjiPanayiotou—the interested party—to the post of Senior Surveyor in the Department of Lands & Surveys.

The main ground of appeal is that in treating the interested party as eligible for promotion the respondent contravened section 44 (1) (d) of the Public Service Law, 1967, (33/67) whereby it is provided that no public officer shall be promoted unless “ he has not been punished during the preceding two years for any disciplinary offence of a serious nature ”.

It is not in dispute—and it emerges clearly both from the personal file of the interested party and from the confidential reports file regarding such party which were before the respondent Commission at the material time—that during the two years previous to his *sub judice* promotion the interested party was on two occasions punished disciplinarily under sections 80 (a) and 81 of Law 33/67 ; *i.e.* summarily by the appropriate hierarchically superior authority and not by the respondent Commission under section 82 of the said Law : On the 7th May, 1969, and on the 27th January, 1970, he was severely reprimanded for gross negligence and indifference in the execution of his duties.

We are in agreement with the view of counsel for the appellant and for the respondent (with which counsel for the interested party did not, really, disagree) that it is for the respondent Commission to evaluate itself the nature of a disciplinary offence when, in applying section 44 (1) (d), it decides on the eligibility for promotion of a public officer.

* Reported in this Part at p. 193 *ante*.

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In our view rightly the Public Service Commission was entrusted by law with such task because it is thus rendered feasible to guard against not only the possibility of insufficient punishment having been meted out for a serious offence but, also, against the possibility of too severe punishment having been meted out for a non-serious offence.

As it appears from the relevant minutes of the respondent Commission—of the 27th October, 1970—the Commission treated on that date the interested party as being eligible for promotion because it took the view, after having “considered the two punishments” imposed on the interested party “during the last two years”, that “the punishments in question were not of a serious nature and, therefore, he could be considered for promotion in accordance with section 44 (1) (d) of Law 33/67”. It is, thus, quite clear that the Commission was unduly influenced by the nature of the punishments imposed and it did not discharge properly its duty of evaluating itself the nature of the disciplinary offences in respect of which the interested party had been punished. Moreover, the Commission was not in a position, at all, to duly discharge its said duty because all that it had before it in this connection were copies of two letters, dated the 7th May, 1969 and the 27th January, 1970, respectively, in each of which there were stated only the disciplinary charge against the interested party, the fact that he had been found guilty in respect thereof, after an inquiry had been carried out by a departmental committee, and that he had been punished by being severely reprimanded; the Commission did not have before it the salient facts in relation to each of the two occasions in question and, therefore, it knew nothing of the circumstances in which the interested party had, on each such occasion, been found guilty of having been grossly negligent and indifferent in the execution of his duties.

It is not necessary for the purpose of deciding the present case to lay down to what extent the respondent Commission should inquire into the facts constituting a disciplinary offence (which has been dealt with summarily by another organ) before deciding whether it is of “a serious nature”, in the sense of section 44 (1) (d) of Law 33/67; but we have no difficulty in holding that in this case the Commission should at least have asked to be furnished with the reports of the departmental committees which are referred to, respectively, in the afore-mentioned two letters.

Consequently the administrative process by means of which the promotion of the interested party was made is

vitiated because of the failure of the respondent Commission to act duly in accordance with the provisions of section 44 (1) (d) and, therefore, such promotion has to be declared null and void and of no effect whatsoever.

In view of this we do not have to pronounce on the other ground of appeal to the effect that there has been a contravention of section 44 (1) (c) of Law 33/67 because the interested party was treated as eligible for promotion though in respect, at least, of one out of the two immediately preceding years he was described in confidential reports as unsuitable for promotion. In relation to the provisions of section 44 (1) (c) we have, however, to deal with an issue which has been raised by counsel for the interested party, *viz.* that from confidential reports regarding the appellant it appears that he was not eligible for promotion, in the light of section 44 (1) (c), and, that, therefore, he had no legitimate interest entitling him to make a recourse : This issue cannot be decided in favour of the interested party as we are not prepared to say that there is anything in the confidential reports in question which amounts to reporting that the appellant was "unsuitable for promotion" within the meaning of section 44 (1) (c).

In the light of the foregoing this appeal is allowed. As there has been made no order as to costs by the trial Judge and in view of the fact that the legal issue on which the case has been determined is a novel one we do not propose to make any order as to the costs of this appeal.

Appeal allowed. No order as to costs.

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