

1986 October 13

[A. LOIZOU, SAVVIDES, LORIS, STYLIANIDES, KOURRIS, JJ.]

ZACHARIAS PAPANICODEMOU,

Appellant-Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Revisional Jurisdiction Appeal No. 506).

*Public Officers—Promotions—Qualifications—Scheme of Service
—Possession of qualifications—A matter within the dis-
cretion of the Public Service Commission—Judicial control
—Principle applicable.*

*Public Officers—Promotions—Head of Department—Comments
or recommendations by him in forwarding applications for
promotions—Not improper.*

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The appellant and the interested party were candidates for the post of Assistant Registrar in the Judicial Department. Both have been serving as Clerks Second Grade, the appellant in the Registry of the District Court of Larnaca and the interested party in the Registry of the Supreme Court. In forwarding the applications of the said candidates both the Registrar of the District Court of Larnaca and the Chief Registrar of the Supreme Court sent accompanying letters to the respondent Commission in which each commented favourably on the ability and performance of the respective candidate. In his said letter the Chief Registrar expressly stated that the interested party had the ability to control staff.

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The respondent Commission promoted to the said post the interested party and as a result the appellant filed a recourse to this Court, which was dismissed by the President of this Court. Hence the present appeal.

The main argument of the appellant is that though in the confidential reports on the interested party for the years 1979, 1980 and 1981 and opposite the rateable items "Managerial Supervisory ability" and "Leadership ability" the Chief Registrar recorded that they did not apply, yet he stated before the Commission that all candidates possess the required qualification of "ability to control staff" and then went on to explain inter alia that the interested party "does not control staff". In the submission of the appellant the comment "not applicable" in the confidential reports should be taken as meaning that the interested party did not possess such a qualification.

Held, dismissing the appeal: (1) Possession of the qualifications required under the scheme of service is a matter within the discretion of the respondent Commission and so long as its decision is reasonably open to it this Court will not interfere. The sub judice decision was reasonably open to the respondent Commission.

(2) There is nothing improper on the part of a Head of a Department to include his comments and recommendations in forwarding an application for promotion by a candidate.

Appeal dismissed.

No order as to costs.

Appeal.

Appeal against the judgment of the President of the Supreme Court of Cyprus (Triantafyllides, P.) given on the 1st June, 1985 (Revisional Jurisdiction Case No. 487/82)* whereby appellant's recourse against the promotion of the interested party to the post of Assistant Registrar was dismissed.

E. Lemonaris, for the appellant.

G. Erotokritou (Mrs.), Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

A. LOIZOU J. read the following judgment of the Court. The sole ground upon which this appeal has been argued

* Reported in (1986) 3 C.L.R. 451.

before us is that the interested party Savvas Raspopoulos did not possess the required by the Scheme of Service qualification of "ability to control staff" and consequently the learned President who tried the recourse in the first instance wrongly dismissed same on the ground that the respondent Commission did not act contrary to Law or under a misconception of law and fact. 5

The relevant facts are briefly these. The appellant and the interested party were candidates for the post of Assistant Registrar in the Judicial Department, which is a first entry and promotion post, having submitted applications in General Form 6, through their respective Heads of Department. Both have been serving in the said Department for some years now as Clerks Second Grade, the appellant in the Registry of the District Court of Larnaca, admittedly for a much longer period and the interested party in the Registry of the Supreme Court. In forwarding their respective applications, both the Chief Registrar and the Registrar of the District Court of Larnaca through whom the parties submitted their applications sent accompanying letters to the respondent Commission that appears in the relevant files in which each commented favourably on the ability and the performance of the candidates. In fact the Registrar of the District Court of Larnaca included in the same letter the comments for two other candidates serving under him who had also applied for the post. It may be mentioned here that the Chief Registrar in his letter expressly stated that the interested party had the ability to control staff. 10 15 20 25

The main argument advanced by learned counsel for the appellant stems from the fact that whereas in the confidential reports on the interested party for the years 1979, 1980, 1981, and opposite rateable items 10 and 11 which speak of "Managerial Supervisory ability" and "Leadership ability" respectively the Chief Registrar who was the reporting officer on the interested party made no assessment but simply recorded that they did not apply, yet at the interviews of the candidates by the respondent Commission, the Chief Registrar stated that all the candidates possess the required qualification of "ability to control staff" and then went on to explain that the appellant and a certain 30 35 40

Mr. Ioannou did actually control staff whereas Messrs Zindilis and Eliades did not control staff but have the ability to do so and the interested party "does not control staff". This, learned counsel argued, constituted a serious contradiction, as the comment of "not applicable" should be taken as meaning that the applicant did not possess such a qualification.

The learned President in his judgment held that the respondent Commission was not labouring in this respect under a misconception and moreover that it was reasonably open to it on the material before it to come to the conclusion that the interested party did possess the required by the Scheme of Service qualification of "ability to control staff".

We endorse this conclusion as in addition to what was stated by the Chief Registrar orally before the respondent Commission there was also the letter to which reference has already been made with which the application of the interested party was forwarded in which as we have seen, he had explicitly said that the interested party did possess that qualification. Consequently in our view the fact that in expressing his views to the respondent Commission at the conclusion of the interviews it was thought unnecessary to single him out regarding the possession by him of this qualification which in any event he mentioned as being possessed by all the candidates in the opening sentence of his statement which he qualified by addition "but to a different degree". Needless to say that whether a particular candidate possesses the qualifications required under the relevant Scheme of Service is a matter within the discretion of the Public Service Commission and so long as its decision as in this case was reasonably open to it, this Court will not interfere. This ground of appeal therefore has no merit and must fail.

Before concluding, however, we wish to say that with regard to the argument advanced on behalf of the appellant to the effect that it was not permissible in Law to a Head of a Department through whom an application for appointment or promotion is sent to include any comments or recommendations, in his accompanying letter, we have

found no legal basis to support such a contention. On the contrary it is, to say the least, the constant practice to include such comments in forwarding such applications by the immediate superior of applicants. This is apparent from what both the Chief Registrar and the Registrar of the District Court of Larnaca did in forwarding the applications of the officers serving under them and of whom they were the immediate superiors. There is in our view nothing improper on the part of such an officer to include their comments and, if thought necessary, their recommendations in forwarding such applications.

For all the above reasons the appeal must fail and is hereby dismissed but in the circumstances there will be no order as to costs.

Appeal dismissed.
No order as to costs.