

1987 August 25

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

VASSOS STYLIANIDES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE PUBLIC SERVICE COMMISSION,
2. THE ACCOUNTANT-GENERAL,

Respondents.

(Case No. 626/85).

5 *Public Officers — Promotions — Confidential reports — Circular 491/79 — Changes in confidential reports for applicant to his detriment by the countersigning officer without prior discussion with the reporting officer — Such deviation from the regulations tantamounts to an illegality — Moreover, the sub judice decision violates Art. 28 of the Constitution.*

10 *Constitutional Law — Equality — Constitution, Art. 28 — Changes in confidential reports of public officers by the countersigning officer in violation of the relevant regulations (circular 491/79) — Violation of principle of equality.*

By means of this recourse the applicant challenges the validity of the decision to promote the interested party to the post of Senior Accountant.

Both the applicant and the interested party were described by the Head of the Department as excellent. The Head of Department, however, recommended the interested party as being «clearly superior as regards service».

15 The Commission noted that both candidates have remarkable confidential reports for the last three years 1982, 1983 and 1984. It, also, noted that the previous Accountant-General considered the interested party as of a lesser ability than he appears to be during recent years under the present Accountant-General, as well as the view of the present Accountant-General
20 that the interested party was in the past the victim of intrigues.

Finally, the Commission noted that the interested party was by far senior to the applicant.

As a result the Commission reached the sub judge decision

It must be noted that applicant was rated for 1982 as excellent by the reporting officer on all rateable items, but the present Accountant-General changed the rating on three items to one of «very good»

As regards 1983, the reporting officer rated the applicant as «excellent» on all items except one, on which he rated him as «very good», but, once again, the same countersigning officer changed the rating on three items to one of «very good» **5**

The aforesaid changes do not appear to have been brought to the knowledge and discussed with the reporting officer **10**

Held, *annulling the sub judge decision*, that in the light of the decision of the Full Bench of this Court in the *Republic v Argyndes* (1987) 3 C L R 1092 the sub judge decision has to be annulled, as there has been a deviation by the countersigning officer from the express provision of the regulations concerning preparation of confidential reports*, which is tantamount to an illegality, moreover, and in the light of the same authority the sub judge decision violates Art 28 of the Constitution **15**

Sub judge decision annulled
No order as to costs

Cases referred to **20**

Republic v Argyndes (1987) 3 C L R 1092

Recourse.

Recourse against the decision of the respondent to promote the interested party to the post of Senior Accountant in the Treasury Department, in preference and instead of the applicant. **25**

A. S. Angelides, for the applicant.

A. Vassiliades, for the respondents.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recourse the applicant challenges the promotion of the interested party Frixos Drakos to the post of Senior Accountant. **30**

* Circular 491/79 of the Council of Ministers

The facts of the case are briefly these. The post of Senior Accountant is a promotion post from the immediately lower one of Accountant. In accordance with the prescribed procedures the matter was referred to a departmental board, which ultimately
5 recommended the applicant and the interested party as the candidates satisfying the qualifications required by the scheme of service for the post and recommended them for promotion.

The respondent Commission at its meeting of the 21st May, 1985, examined the report of the departmental board and decided
10 to hold another meeting so that the Accountant-General would be invited to be present. In its minutes of the said meeting (Appendix 7) it is stated:

•Reference to item 3 of the minutes of the meeting of the Commission dated 14th March, 1985 and to item 2, of the
15 minutes of the meeting of the Commission dated 21st May, 1985.

At the meeting the Accountant General Mr. Rogiros Kyrris who was present mentioned the following:

‘It is about two excellent from every point of view
20 candidates. Frixos Drakos is recommended, who is clearly superior as regards service.’

At this point the Accountant-General withdrew from the meeting.

Following that the Commission considered the evaluation
25 and comparison of the Candidates. The Commission examined the material elements from the File for the Filling of the Post as well as from the personal files and the confidential reports of the candidates and took also into consideration the conclusions of the departmental Board and the views and
30 recommendations of the Accountant-General.

The Commission noted that the two candidates have remarkable confidential reports for the recent years. Indicatively it is mentioned that during the last three years they
35 were both excellent with analytical gradings: Drakos 9-3-0 in 1982, 12-0-0, in 1983 and 10-2-0 in 1984 and Stylianides 9-3-0 in 1982, 8-4-0 in 1983 and 11-1-0 in 1984.

Especially as regards Drakos, the Commission did not omit to note that the previous Accountant-General of the Republic

considered in general this officer as of a lesser ability from what he appears to be during the recent years under the present Accountant-General. In one in particular, instance, in the confidential report for 1980 he was graded in certain paragraphs of the analytical grading as average. From the contents of the confidential reports it emanates that the problems of Drakos stem from the peculiar conduct and stand towards his colleagues and others, the lack on his part of spirit of cooperation and his weakness to adapt, as it can be deduced from the views expressed in 1977 by the then Director-General of the Ministry of Communications and Works where the officer was serving. But the qualifications, and intelligence of the officer were always recognised in the confidential reports and it is now clear that under the new Accountant-General his performance made impressive progress so that during the last three years to be assessed very high and be praised by his superior as being 'in all respects an excellent officer' and that 'the quality of his work is excellent and qualitative, superior from that of any other officer of the Accountant-General's Office'.

The view of the present Accountant-General that the officer was in the past the victim of intrigues and unfounded accusations as regards the performance of his duties has been noted, but the elements before the Commission are not such that permit it to question the objectivity and correctness of the assessments in relation to other officers, which were made in previous years. The fact, however, remains that during the last three years the officer made an excellent performance.

From the point of view of seniority Drakos is ahead with a great difference. Comparatively he has been promoted to the present post (Accountant First Grade) as from 15th July 1968, whereas Stylianides was promoted to the same post as from 15th December 1978.

The Commission gave also the proper weight to the qualifications of the candidates.

The Commission having taken into consideration the above, as well as the recommendation of the Accountant-General, decided that Drakos is now superior for promotion

although Stylianides is also an excellent officer with higher confidential reports from Drakos during the three previous years (1979-1981) and about equally high with Drakos during the last three years.

5 Consequentially the Commission taking into consideration
all the aforesaid material elements decided on the basis of the
established criteria in their totality (merit, qualifications,
seniority) that Frixos Drakos is superior to the other candidates
and decided to promote him as the most suitable for the post
10 of (Ordinary Budget) Senior Accountant in the Accountant-
General's office as from 15th June, 1985.»

The service, career of the applicant and the interested party as
well as their qualifications appear in Appendix 4 and I need not
repeat them here. Suffice it to say that the interested party is by ten
15 and a half years senior to the applicant considering the date of
appointment to the previous post and has had an overall longer
service of three and a half years.

It was argued on behalf of the applicant that there was a
violation of the Regulations contained in Circular No. 491 of the
20 26th March, 1979 and as supplemented on the 11th January 1983
and in particular violation of Regulations 4, 5 in conjunction with
Regulation 9.

Since the filing of this recourse the Full Bench of this Court
delivered on the 11th June 1987, its judgment in the case of *The*
25 *Republic v. Argyrides* Revisional Appeal No. 678*, in which
regarding the compliance with the Regulations concerning the
preparation of Confidential Reports, it was held that:

«Such regulations are not subsidiary legislation in the strict
sense but have to be strictly complied with. The deviation by
30 the countersigning officer from the express provisions of such
regulations is tantamount to an illegality. Moreover, the sub
judice decision should be annulled as violating Article 28 of
the Constitution. Every public officer is entitled to expect that
the procedure in the preparation of confidential reports
35 contemplated by the Regulations approved by the Council of
Ministers should be strictly adhered to in all cases without any
differentiation. Any application of the Regulations in a
different manner in each particular case violates the principle
that a person is entitled to equal treatment which is

* Reported in (1987) 3 C.L.R. 1092

safeguarded under Article 28 of the Constitution. We have, therefore, reached the conclusion that the sub judice decision should be annulled on this ground as well.»

A consideration of the position of the confidential report of the applicant is relevant to the issue raised by this ground of Law. The applicant, an Accountant First Grade was serving in the Ministry of Health during the year 1981. He was rated by the Director-General of that Ministry as «Excellent» on all rateable items and with that rating the Accountant-General of the time was in agreement. During the year 1982 he continued serving in the Ministry of Health and he was again rated as excellent on all rateable items but the present Accountant-General changed the rating on three rateable items to one of «Very Good». They are item 1, «Performance», item 5, «Ability to express in writing» and item 8, «Intelligence». The changes were initialled in blue ink and do not appear to have been discussed or brought to the knowledge of the Director-General of the Ministry of Health who had also prepared the confidential report for the previous year 1981.

In the confidential report for the year 1983 the same Director-General rated the applicant as «Excellent» on all rateable items. The Accountant-General agreed on all rateable items except on item 5, «Ability to express in writing» on which he was rated as «Very Good». The Accountant-General changed the rating on three rateable items, to «Very Good», namely item 7, «Cooperation/Relations», item 8, «Mental Ability/Intelligence» (noimosini/effiia) and item 10 «Managerial/Supervisor Ability». Again these changes do not appear to have been brought to the knowledge and discussed with the reporting officer.

For the year 1984 the same reporting officer rated the applicant as «Excellent» on all rateable items but the Accountant-General changed the rating on item 8 «Intelligence» to «Very Good». On this occasion under part 5, of the report headed «Observations and certifications of the countersigning officer» there appear in addition to the signature of the counter-signing officer that is the Accountant-General whose signature is dated the 4th March, 1985, the signature of the reporting officer which is dated the 8th March 1985.

From the way the two signatures are appended side by side I am led to conclude that the change effected by the Accountant-General on this occasion was brought to the knowledge of the reporting officer. This, however, does not change the position

regarding the noncompliance with the relevant regulations regarding the preparation of confidential reports in respect of the previous years hereinabove referred to.

- 5 In the light of the decision of the Full Bench in *Argyrides Case* (supra) from which I quoted the relevant passage I feel bound to conclude that the sub judge decision should be annulled on the ground that there has been a deviation by the countersigning officer from the express provisions of such regulations which is tantamount to an illegality and that moreover the sub judge
- 10 decision should be annulled as violating Article 28 of the Constitution.

For all the above reasons the sub judge decision is annulled but in the circumstances there will be no order as to costs.

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Sub judge decision annulled. No order as to costs.