

1987 November 18

DEMETRIADES J.

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS CHRYSOSTOMOU.

*Applicant.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION.

*Respondent.*

*(Case No. 262/84).*

*Public Officers — Appointments — First entry post — Scheme of service —  
Interpretation of — Judicial control — Principles applicable*

*Reasoning of an administrative act*

By means of the present recourse the applicant challenges the decision of the respondent to appoint, instead of him, the «interested party», to the post of Physicist Class II, Medical Services and Public Health Services, as from the 15th May 1984.

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Counsel for the applicant argued that the interested party did not possess the post-graduate Diploma or Title in Medical Physics, which was required by the relevant scheme of service. He further submitted that the sub judice decision is not duly reasoned.

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Held, *dismissing the recourse.*

(1) In this case and in the light of the material placed before the Court the decision that the interested party possessed the qualifications of the scheme of service was reasonably open to the Commission

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(2) The reasoning of the Commission in reaching its decision clearly appears in the minutes of its meeting and the material taken into consideration by it in reaching its decision.

*Recourse dismissed.  
No order as to costs.*

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*Cases referred to.*

*Papanicodemou v. The Republic* (1986) 3 C L.R. 1750.

*Petsas v The Republic.* 3 R.S.C.C 60

**Recourse.**

- 5 Recourse against the decision of the respondent to promote the interested party to the post, of Physicist Class II in the Medical Services and Public Health Services in preference and instead of the applicant.

*A. S. Angelides*, for the applicant.

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

*Cur. adv. vult.*

- 15 DEMETRIADES J. read the following judgment. By means of the present recourse the applicant challenges the decision of the respondent Public Service Commission to appoint, instead of him, Mr. Stelios Christofides, hereinafter referred to as the «interested party», to the post of Physicist Class II, Medical Services and Public Health Services, as from the 15th May, 1984

- 20 As the post concerned is a first entry post, the Commission on the 3rd May, 1983, decided to publish the vacancy in the Official Gazette of the Republic and allow three weeks for the submission of applications. After the vacancy of the post was published, four applications were submitted by candidates to the Commission, amongst which were those of the applicant and the interested party. All applications were forwarded to the Departmental Committee which was constituted for the purpose of selecting and recommending to the Commission two candidates eligible for appointment to the said vacancy, by virtue of the provisions of section 36 of the Public Service Laws 1967 to 1983.

- 30 On the 24th October, 1983, the Departmental Committee, after it had considered all relevant material placed before it and had interviewed the four candidates, forwarded to the Commission its report by which it recommended the applicant and the interested party as eligible for appointment.

- 35 As regards the interested party, the Departmental Committee explained that although he did not possess the post-graduate diploma or degree in Medical Physics required by the relevant

scheme of service, nevertheless, in view of his academic qualifications which he submitted to the Public Service Commission with his application (namely his Ph. D. Degree in Physics with research topic directly relating to Medical Physics and the fact that he had attended the topics required for the acquiring of the M.Sc. Degree in Medical Physics) he was considered as suitable for appointment to the post concerned. 5

The certificate of the post-graduate degree which was given to the applicant by the University of Aston in Birmingham and which was submitted by him to the Commission, states that he was duly admitted to the Degree of Doctor of Philosophy. When submitting his said certificate, he attached a letter, dated the 2nd October, 1981, which was signed by a Professor on Electron Physics, as well as a reference letter by the Head of the Department of Physics. In these letters explanations are given with regard to the topics attended by the applicant and the practical work he carried out during his post-graduate studies. 10 15

By a letter dated the 17th November, 1983, Mr. Parellis, on behalf of the respondent Commission, requested the British Council to advise them whether the Degree of Doctor of Philosophy of the University of Aston in Birmingham is considered as a Degree in Medical Physics. Photocopies of the applicant's certificate issued by the University and of the letters of the two Professors were forwarded to the British Council for guidance. 20

On the 22nd November, 1983, Mr. Zevlaris, the Office Manager of the British Council in Cyprus, replied that as the reference letter from the University of Aston in Birmingham dated the 14th April, 1983, specified that Mr. Christofides special topic in his Final Year was «Medical Physics», he was inclined to consider his Doctorate qualification as a Degree in Medical Physics. 25 30

On the 6th February, 1984, the Commission interviewed separately both candidates in the presence of Mr. Andreas Markides, the Director of Medical Services and Public Health Services. The relevant part of the minutes of the Commission reads as follows:- 35

«Τόσο ο Διευθυντής των Ιατρικών Υπηρεσιών και Υπηρεσιών Δημόσιας Υγείας όσο και ο Πρόεδρος και Μέλη της Επιτροπής Δημόσιας Υπηρεσίας υπόβαλαν στους υποψηφίους ερωτήσεις σε γενικά θέματα και

κυρίως σε θέματα που αφορούν τα καθήκοντα της θέσης, τα οποία αναφέρονται στο Σχέδιο Υπηρεσίας.

5 Μετά το πέρας των συνεντεύξεων, ο Διευθυντής των Ιατρικών Υπηρεσιών και Υπηρεσιών Δημόσιας Υγείας ανάφερε τα εξής σχετικά με την απόδοση των υποψηφίων στις σημερινές συνεντεύξεις:

Και οι δύο είναι ικανοί και έχουν τα απαιτούμενα προσόντα.

10 Ο Χρυσοστόμου έχει πιο πολλές γνώσεις στον τομέα της Ιατροφυσικής λόγω πείρας.

Ο Χριστοφίδης ήταν πιο πρακτικός και ο Χρυσοστόμου πιο ευρύς και θεωρητικός.

15 Στο σημείο αυτό ο Διευθυντής των Ιατρικών Υπηρεσιών και Υπηρεσιών Δημόσιας Υγείας αποχώρησε από τη συνεδρίαση.

20 Στη συνέχεια η Επιτροπή, αφού έκρινε ότι και οι δυο υποψήφιοι ικανοποιούν τα απαιτούμενα προσόντα του Σχεδίου Υπηρεσίας στα οποία περιλαμβάνεται και καλή γνώση της Αγγλικής, ασχολήθηκε με τη γενική αξιολόγηση και σύγκριση αυτών.

25 Η Επιτροπή εξέτασε τα ουσιαστά στοιχεία από το φάκελο πλήρωσης της θέσης και από τις αιτήσεις και τα δικαιολογητικά των υποψηφίων και έλαβε υπόψη τα πορίσματα της Τμηματικής Επιτροπής καθώς και την απόδοση των υποψηφίων στις συνεντεύξεις τους με την Επιτροπή Δημόσιας Υπηρεσίας, υπό το φως και των σχετικών κρίσεων και απόψεων του Διευθυντή Ιατρικών Υπηρεσιών και Υπηρεσιών Δημόσιας Υγείας.

30 Η Επιτροπή, αφού έλαβε υπόψη όλα τα ενώπιόν της ουσιαστά στοιχεία, συμπεριλαμβανομένων των προσόντων των υποψηφίων, έκρινε ότι ο Στέλιος ΧΡΙΣΤΟΦΙΔΗΣ υπερέχει γενικά του άλλου υποψηφίου και τον επέλεξε σαν πιο κατάλληλο για διορισμό στη μόνιμη (Τακτ. Προϋπ.) θέση Ιατροφυσικού, 2ης Τάξης, στις Ιατρικές Υπηρεσίες και Υπηρεσίες Δημόσιας Υγείας.»

35 («Both the Director of Medical Services and Public Health Services, as well as the Chairman and Members of the Public

Service Commission put questions to the candidates on general matters and especially on matters relating to the duties of the post, which are referred in the Scheme of Service.

After the conclusion of the interviews, the Director of Medical Services and Public Health Services stated the following in relation to the performance of the candidates in today's interviews: 5

Both are capable and possess the required qualifications.

Chrysostomou has more knowledge in the Medical Physics area due to experience. 10

Christofides was more practical and Chrysostomou more wide and theoretical.

At this stage the Director of Medical Services and Public Health Services withdrew from the meeting.

In continuation the Commission, having considered that both candidates satisfy the required qualification of the Scheme of Service in which there is included, also, good knowledge of English, was occupied with the general assessment and comparison of them. 15

The Commission examined the relevant material from the file of the filling of the post and from the applications and data of the candidates and took into account the conclusions of the Departmental Committee, as well as the performance of the candidates at their interview with the Public Service Commission, in the light of the relevant views and opinion of the Director of Medical Services and Public Health Services. 20 25

The Commission, having taken into account all relevant material before it, including the qualifications of the candidates, decided that Stelios CHRISTOFIDES is generally superior to the other candidate and selected him as more suitable for appointment to the permanent (Ord. Budg.) post of Physicist, Class II, in the Medical Services and Public Health Services. 30

The main argument of counsel for the applicant in this recourse is that the interested party did not possess the post-graduate Diploma or Title in Medical Physics, which was required by the relevant scheme of service. He further submitted that the sub justice decision is not duly reasoned. 35

It is an undisputed fact that both the applicant and the interested party possess the first qualification that the scheme of service requires, namely a University Diploma or Title in Physics.

5 Regarding the second qualification required by the scheme of service, namely a post-graduate Diploma or Title in Medical Physics, the applicant possesses a Degree of Master of Science in Applied Science (Nuclear Medicine) of the University College of Dublin, National University of Ireland (1981-82) and the interested party possesses a Degree of Doctor of Philosophy of the University  
10 of Aston in Birmingham.

It is well settled that whether a candidate possesses the qualifications required under a scheme of service is a matter falling within the discretion of the authority that is entrusted with appointments to a particular post and that this Court will not  
15 interfere if the conclusion reached by such authority was reasonably open to it (*see, inter alia, Papanicodemou v. The Republic*, (1986) 3 C.L.R. 1750, 1753, and *Petsas v. The Republic*, 3 R.S.C.C. 60, 63).

In the present case I have not been persuaded that the  
20 Commission has laboured under a misconception as regards the qualifications of the interested party or that it had exceeded the outer limits of its discretion, but I am convinced that on the material placed before it, it was reasonably open to the Commission to reach the conclusion that the interested party was  
25 an eligible candidate.

I reached my above conclusion having in mind that the Commission, in deciding that the interested party possessed the second qualification required by the scheme of service, took into consideration the opinion expressed by the Office Manager of the  
30 British Council in Cyprus, the views of the Departmental Committee and the statement of the Director of Medical Services and Public Health Services.

I now come to the complaint of the applicant that the sub judice decision is not duly reasoned. The answer to this submission is that  
35 *the reasoning of the Commission in reaching its decision clearly appears in the minutes of its meeting and the material taken into consideration by it in reaching its decision.*

Before concluding, I would like to point out that the Supreme Court of this country has repeatedly decided, and this should have a bearing on counsel- advising clients, that the Court will not interfere and substitute the decision reached by an administrative organ with its own, unless it is proved by the party complaining that the administrative organ in reaching its decision laboured under a misconception of fact or law or that it exercised its discretion in a wrong manner. 5

In the present case the applicant has failed to satisfy the Court that the Commission was wrong in reaching the sub judice decision. 10

In the result, the recourse is dismissed with costs.

*Recourse dismissed  
with costs.*