

(1988)

1988 June 28

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION
SOTERIS ARNOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 330/86).

Public Officers—Promotions—Head of Department—Recommendations—Whether performance of candidates during the period following the period of the last confidential reports can be taken into consideration in making the recommendations—Question determined in the affirmative—Commission entitled to be informed of the merits of the candidates on the day it examines the matter. 5

Public Officers—Promotions—Confidential reports—The circular for their preparation—Disagreement between reporting and countersigning officer not as regards evaluation of particular candidate, but on manner in which the former compiled his reports in general—Rule of procedure in case of disagreement as to the evaluation need not be followed. 10

Public Officers—Promotions—Confidential reports—Sudden change in rating by reporting officer—Inquiry into the matter by countersigning officer—A legitimate thing to do.

Public Officers—Promotions—Striking superiority—Additional qualification possessed by applicant—Interested party substantially senior to the applicant, had better confidential reports during 1984, better performance during 1985 and was recommended for promotion—Applicant failed to discharge the burden cast on him. 15

The facts of this case sufficiently appear from the hereinabove notes. 20

Recourse dismissed.

No order as to costs.

Cases referred to:

Kazamias v. The Republic (1984) 3 C.L.R. 1497.

Recourse.

5 Recourse against the decision of the respondent to promote the interested party to the permanent post of Agricultural Officer A in preference and instead of the applicant.

A.S. Angelides, for the applicant.

A.Papasavvas, Senior Counsel of the Republic, for the respondent.

10 A. Pandelides, for the interested party.

Cur. adv. vult.

15 A. LOIZOU P. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that the decision of the respondent Commission to promote A. Papadopoulos to the permanent post of Agricultural Officer A, Department of Agriculture as from the 15th February 1986 is null and void and of no legal effect whatsoever.

20 As the post in question is a promotion post from that of Agricultural Officer a list of the eligible candidates for promotion was sent to the Departmental Board together with their personal files, their confidential reports and copies of the scheme of service for the post. The Departmental Board considered from the material before it that 26 officers possessed the required qualifications out of which it recommended three, including the applicant and the
25 interested party, as superior to the rest.

The respondent Commission at its meeting of the 25th November 1985 considered the recommendation of the Departmental Board and decided that another eight officers should also be con-

sidered for promotion.

At its meeting of the 2nd December, 1985 it heard the views and recommendations of the Director of the Department of Agriculture. He recommended A. Papadopoulos whom he considered as excellent. He based this recommendation on the confidential report of 1984 and on his anticipation that he would also be excellent for the year 1985 for which the confidential report had not until that date been submitted. He stated that there were no others who were substantially better than him though he did not possess an additional qualification, but such was not essential. He also had substantial seniority over everybody else. As regards the applicant he stated that he was 'very good' his output being slightly less than that during the previous year.

The respondent Commission, having found after study of the matter that only five candidates including the applicant possessed the additional qualification, at its meeting of 4th February 1986, requested the Director of Agriculture to reconsider his recommendations in view of this fact. He then stated that despite this, he still considered A. Papadopoulos as the most suitable and repeated his recommendation.

The respondent Commission examined then the material factors from the file for the filling of the post and from the candidates personal files and confidential reports. It also considered the conclusions of the Departmental Board and the views and recommendations of the Director. It further noted that Papadopoulos was the most senior followed by Arnos, Papasavvas, Herodotou, Stavrides and Starvou in that order.

The respondent Commission noted the high recent confidential reports of Papadopoulos i.e. very good for the year 1983, excellent for 1984 and according to the Director that he would be excellent for 1985 in which year he also showed improvement, that he was first in seniority with considerable difference and concluded in the light of all the material factors before it, on the basis of the established criteria that A. Papadopoulos was superior to the

other candidates and decided to promote him as it did. As a result the applicant filed the present recourse.

5 It was contended on behalf of the applicant that the respondent Commission wrongly took into consideration the confidential report of the applicant for the year 1985 it having been compiled by the reporting officer, the District Agricultural Officer, Larnaca, A. Hadji Antonis, in a prejudiced manner after pressure by the Director of the Department of Agriculture to alter and reduce the rating of the applicant's confidential report. And furthermore that the
10 said Director's reference to the performance of the applicant for 1985 was wrong and misleading.

To begin with, as it transpires, the confidential reports of the applicant and of the interested party for the year 1985 were compiled by the reporting officer on the 9th January 1986 was countersigned by the Director of the Department of Agriculture on the
15 18th February, 1986 and stamped as received by the Respondent Commission on the 1st March, 1986. As the sub judge decision was reached on the 4th February 1986, that is 24 days earlier, such report was clearly not before the respondent Commission on the date their decision was reached and could not have been considered by it.
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Irrespective of this, having heard the evidence of both the reporting officer A. Hadji Antonis, and the countersigning officer C. Phocas, I consider that the allegations of the reporting officer to the effect that he was forced by the countersigning officer to
25 alter the confidential report of the applicant for 1985 as a conduct unbecoming to a civil servant who for reasons of purely personal benefit acted so. These allegations were first voiced in a letter by him to his trade union committee which was written about nine months later after the alleged alteration of the report, in view of
30 his impending promotion, for the purpose of requesting that the Director of the Department of Agriculture should not be present at the promotions for which he was a candidate and secondly that he should not compile his confidential report for the year 1986-1987.
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In giving evidence before me, the Director of the Department of Agriculture admitted to have inquired about the sudden change in the rating of the officers even on items which are not normally expected to change from year to year, which in my view was a le-

gitimate thing to do. Furthermore, it was not a disagreement between the reporting officer and the counter - signing officer on evaluation, where one would expect the provisions of the Circular to be complied with but a disagreement as to the manner the reporting officer compiled the confidential reports generally.

As far as the recommendations of the Director are concerned I cannot find anything irregular about them or that they presented a different or misleading picture of the candidates. I should add at this point that it was not improper as alleged for the Director to express his evaluation of the candidates performance for the year 1985 in view of the fact that the confidential reports for the year had not as yet been compiled, since the respondent Commission has to be informed of the merits of candidates as they stand on the day it examines the matter, that is, the day it hears the recommendations of the Head of the Department. Moreover, from the wording of section 44(3) of the Public Service Law 1967 it is clear that the recommendation cannot be confined as regards time limits to the year of the last confidential report submitted, but to the period up to the moment such recommendation is made. (*Kazamias v. Republic* (1984) 3 C.L.R. 1497 at pp. 1506 - 1507). I consider therefore that these arguments of the applicant should fail.

It was further contended, apart from the fact that the applicant as alleged was slightly superior to the interested party, he also possesses the additional qualification provided by the scheme of service and the respondent Commission failed to give any special reasoning for preferring the interested party who does not possess such.

I find, as far as this argument is concerned that special reasoning has been given by the respondent Commission such appearing in its minutes of 4th February, 1986. I further find the applicant has failed to establish any striking superiority which is necessary to enable the Court to interfere with the sub judice decision.

In the result this recourse fails and is hereby dismissed, but in the circumstances there will be no order as to costs.

*Recourse dismissed.
No order as to costs.*