

1988 November 4

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LAMBROS SERGHIS,

Applicant,

v.

THE REPUBLIC OF CYRPUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondents.

(Case No. 992/85).

Public Officers—Appointments/Promotions—First entry and promotion post—Post high in the hierarchy—Breadth of discretion—Interviews, performance at—Weight.

5 *Public Officers—Appointments/Promotions—First entry and promotion post—Head of Department—Recommendations—Better confidential reports and better performance at the interview by interested party—Requirement of special reasoning for not following such recommendation satisfied.*

10 *Public Officers—Appointments/Promotions—First entry and promotion post—Scheme of service—Interpretation and application of—Judicial control—Principles applicable.*

15 The applicant was recommended by the Head of the Department for appointment to the post of Director of the Department of Agriculture. The Head of the Department placed the interested party second in line stating that regarding administration, approach to personnel matters and co-operation with other colleagues, the interested party was inferior to the applicant.

20 The applicant was senior to the interested in that he held, at the material time, a post higher in the hierarchy than that of the interested party.

However, the interested party had better confidential reports than those of the applicant. Further, the Commission noted that although the interested party in the confidential reports for him was assessed as "good" in the items "Co-operation/Relations" during 1979 and 1984, he was assessed as "very good" in those items in 1980 and 1981 and as "excellent" in 1982 and 1983. With regard to "leadership ability" he was assessed as "excellent" in all years, since 1979. The reports from 1978 to 1983 had been prepared by the said Head of the Department.

5

The performance of the candidates at the interviews was rated as follows: Applicant, almost very good, interested party, very very good.

10

Interested party raised a preliminary objection that the applicant did not possess the required qualifications for the sub justice post.

Held, dismissing both the preliminary objection and the recourse:

(1) The interpretation and application of the schemes of service is the task of the appointing organ and this Court will not interfere with the findings of such organ once its discretionary power in this respect was reasonably exercised. On the material before the Court, the conclusion is that in this case it was reasonably open to the Commission to consider the applicant as qualified.

15

(2) The performance of the candidates at the interviews, was not, on its own, the decisive factor in the present case, but was coupled with the picture presented by the confidential reports. Having regard to the nature of the post and the wide discretionary powers with which the respondent Commission is vested regarding selections in high posts in the public service, the weight placed by the respondent Commission at the interviews was not an undue one in the circumstances.

20

25

(3) With regard to the recommendations of the Head of the Department, the respondent Commission gave sufficient reasons for its departure from them and such reasons are not contrary to the material which was before the Commission.

30

*Recourse dismissed.
No order as to costs.*

Cases referred to:

Ierides v. The Republic (1980) 3 C.L.R. 165.

Recourse:

Recourse against the decision of the respondents to promote the interested party to the post of Director of the Department of Agriculture and Natural Resources in preference and instead of the applicant.

K. Michaelides, for the applicant:

A. Papaşavvas, Senior Counsel to the Republic, for the respondents.

Cur. adv. vult.

DEMETRIADES J. read the following judgment. The applicant by this recourse challenges the decision of the respondent Commission published in the Official Gazette of the Republic, dated the 20th September, 1985, by which Constantinos Phokas, the interested party, was promoted to the post of Director of the Department of Agriculture, in the Ministry of Agriculture and Natural Resources, as from the 15th September, 1985, instead of and in preference to the applicant.

The applicant is holding the post of Head of Animal Husbandry, to which he was promoted on the 1st May, 1982. The interested party was, at the material time, holding the post of Senior Agricultural Officer, to which he was promoted on the 15th December, 1981.

A vacancy in the post of Director in the Department of Agriculture, which is a first entry and promotion post, was published in the Official Gazette of the Republic dated the 31st May, 1985. As a result, six applications were submitted, amongst which those of the applicant and the interested party.

The respondent Commission, having considered the applications, found that all candidates possessed the required qualifications and decided to invite them for an interview. After the inter-

views were concluded, the Director-General of the Ministry of Agriculture and Natural Resources, who was present during the interviews, assessed the performance of the candidates and recommended the applicant as first and the interested party as second choice.

5

The respondent Commission then made its own assessment of the performance of the candidates during the interviews and proceeded, after considering the views of the Head of the Department and the seniority of the candidates, to select the interested party as the most suitable candidate for the post in question. (See the minutes of the meeting of the respondents dated the 2nd September, 1985, which is Appendix 6 to the Opposition). The promotion of the interested party was published in the Official Gazette of the Republic dated the 20th September, 1985, as a result of which the present recourse was filed.

10

15

The recourse is based on the ground that the respondent Commission failed in its paramount duty to select the best candidate.

Before embarking on the issue raised, I will deal with a preliminary issue raised by counsel for the interested party, which is to the effect that the applicant does not possess a legitimate interest to file this recourse in that he does not possess the qualifications required by the scheme of service and in particular a University Degree or title in Agriculture.

20

It is a principle of administrative law that an applicant cannot pursue a recourse against a promotion to a certain post unless he himself possesses the qualifications required by the scheme of service for that post.

25

The academic qualifications required by the schemes of service for the post in question are:

"Πανεπιστημιακό Δίπλωμα ή τίτλος εις την Γεωπονικήν ή άλλο θέμα στενώς σχετιζόμενον με την Γεωπονικήν, ως και μεταπτυχιακή εκπαίδευσις μονοετούς τουλάχιστον

30

διαρκείας".

.(("University Diploma or Title in Agriculture or other subject closely related to Agriculture, as well as postgraduate education of at least one year's duration."))

5 The qualifications of the applicant appear in Appendix 6 (en-
closure 7) to the Opposition as well as in the personal file of the
applicant which is exhibit 1A before the Court. These are: Diplo-
ma in Dairying, University of Nottingham; National Diploma in
10 Dairying, Royal Agricultural Society of England; Scottish Diplo-
ma in Agriculture of the Edinburg and East of Scotland College of
Agricultural, Scotland; National Diploma in the Science and Prac-
tice of Agriculture, U.K., and M.Sc. degree in Animal Science,
of the Oklahoma State University, U.S.A.

15 The interpretation and application of the schemes of service is
the task of the appointing organ and this Court will not interfere
with the findings of such organ once its discretionary power in
this respect was reasonably exercised.

20 All the qualifications of the applicant were in his personal file,
which was before the respondent Commission, which found that
they satisfied the provisions of the schemes of service. On the
material before me and bearing in mind that the applicant posses-
ses an M.Sc. in a relevant subject, I find that it was reasonably
open to the respondent Commission to consider the applicant as
25 satisfying the provisions of the scheme of service with regard to
qualifications. The preliminary objection raised by counsel for the
interested party is, therefore, dismissed.

I will now proceed with the merits of the case.

30 Counsel for the applicant argued that bearing in mind the fact
that the two parties were holding different posts, the applicant
holding a higher post than that held by the interested party, the
confidential reports of the applicant ought to have been consid-
ered as better than those of the interested party. Counsel main-

tained that the applicant, who is superior in merit, qualifications and seniority, and also had the recommendations of the Head of the Department, ought to have been preferred to the interested party and that the respondent Commission placed undue weight to the performance of the candidates during the interviews.

5

I consider it useful here to make some more detail reference to the proceedings of the respondent Commission during its meeting dated the 2nd September, 1985, at which the sub judge decision was reached.

At this meeting, the Head of the Department, in giving his recommendations, stated that bearing in mind the nature of the post and the serious responsibilities of the Director, Mr. Serghis, the applicant, was, in his opinion, the most suitable. He placed the interested party as second in line, stating that regarding administration, approach to personnel matters and co-operation with other colleagues, the interested party was inferior to the applicant.

10

15

After the Head of the Department departed the respondent Commission made its own assessment of the performance of the candidates and assessed the applicant as "almost very good" and the interested party as "very very good" and strikingly superior to all other candidates. The respondent Commission then noted that the interested party was strikingly superior with regard to confidential reports. It also noted that although the interested party in the confidential reports for him was assessed as "good" in the items "Co-operation/Relations" during 1979 and 1984, he was assessed as "very good" in those items in 1980 and 1981 and as "excellent" in 1982 and 1983. With regard to "Leadership ability" he was assessed as "excellent" in all years, since 1979.

20

25

The respondent Commission then, after noting that the confidential reports of the interested party from 1978 to 1983 were prepared by the Director-General of the Ministry to which the interested party was seconded for a specific project, proceeded to state that it did not loose sight of the views of the Head of the Department regarding the comparison of the two candidates but

30

found the interested party better in his confidential reports and was particularly impressed by his answers during the interview in matters of administration, organization and supervision of the Department. The respondent Commission also noted the seniority of the applicant and proceeded, on the basis of the established criteria, to select the interested party.

The picture appearing from the confidential reports, with the exception of those for 1984, is that the interested party was better than the applicant, being generally rated as "excellent" in all years since 1979. The respondent Commission also found that the interested party was better during the interviews and its members were particularly impressed by his answers. Although particular importance was placed by the respondent Commission to the performance of the candidates during the interviews, this was not, on its own, the decisive factor in the present case, but was coupled with the picture presented by the confidential reports. In any event, having regard to the nature of the post and the wide discretionary powers with which the respondent Commission is vested regarding selections in high posts in the public service, the weight placed by the respondent Commission at the interviews was not an undue one in the circumstances (see *Ierides v. Republic*, (1980) 3 C.L.R. 165, at p. 183).

With regard to the recommendations of the Head of the Department, the respondent Commission gave sufficient reasons for its departure from them and such reasons are not contrary to the material which was before the Commission.

Bearing in mind all the circumstances of the case, I find that it was reasonably open to the respondent Commission to reach the sub judice decision and, in any event, the applicant failed to show striking superiority over the interested party.

As a result, this recourse fails and is hereby dismissed.

In the circumstances, there will be no order as to costs.

*Recourse dismissed.
No order as to costs.*