

1988 March 4

[A. LOIZOU J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GERGHIOS K. HADJIMICHAEL,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

*(Case No. 671/84).*

5 *Public Officers—Appointments—Applicant not among those recommended by the Departmental Committee—Complaint of applicant dismissed by respondents, who adopted the conclusion of the Committee—It does not appear that they felt obliged to do so—Kramvis v. P.S.C. (1986) 3 C.L.R. 1243 adopted—Recourse dismissed.*

*Public Officers—Appointments—Judicial control—Principles applicable.*

*Constitutional Law—Equality—Constitution, Art. 28—Appointments of public officers—Exclusion of applicant from list of those recommended by the Departmental Committee—Does not amount to unequal treatment.*

10 The facts of this case appear sufficiently in the judgment of the Court.

*Recourse dismissed.  
No order as to costs.*

*Cases referred to:*

*Kramvis v. Public Service Commission* (1986) 3 C.L.R. 1243.

**Recourse.**

Recourse against the decision of the respondent to promote the interested parties to the post of Executive Engineer, 2nd Grade in the Department of Public Works in preference and instead of the applicant. 5

*A. Petoufas*, for the applicant.

*A. Papasavvas, Senior Counsel of the Republic*, for the respondent. 10

*A. S. Angelides*, for the interested parties.

*Cur. adv. vult.*

A. LOIZOU J. 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 to the permanent post of Executive Engineer, 2nd Grade in the Department of Public Works, the interested parties, P. Papasozomenos, St. Cleanthous, R. Klokkaris, and St. Kallis, is null and void and of no legal effect whatsoever. 15

Five posts of Executive Engineer 2nd Grade which is a first entry post, were advertised in the official Gazette of the Republic and in response 124 candidates applied. 20

In accordance with section 36 of the Public Service law, 1967 (Law No. 33 of 1967) a departmental Board was set up which

- considered the applications submitted and invited all the candidates for an interview. Out of the eighty-nine candidates who attend it selected twenty candidates whom it recommended to the respondent Commission for appointment to the post in question.
- 5 Eight candidates were considered as not fulfilling the requirements of the Scheme of Service and the remaining sixty-one candidates, including the applicant, who did qualify under the Scheme of Service were considered as inferior to the twenty candidates who were recommended taking into consideration their
- 10 qualifications, performance at the interview, merit, experience and seniority (where applicable).

The respondent Commission decided to call for interview those recommended except three candidates who had already been offered appointments as a result of the filling of other vacant

15 posts of Executive Engineer 2nd Grade in the Department of Public Works.

Meanwhile seven candidates including the applicant, wrote to the respondent Commission complaining about their not having been called for an interview before it. Their complaints were considered by the respondents Commission which decided that since

20 in the circumstances the Departmental Board reasonably considered those recommended as superior, there was no reason to interfere.

Sixteen candidates were finally interviewed as four candidates

25 had already received other appointments. At its meeting of the 9th June, 1984, the respondent Commission heard the views and opinion of the Chairman of the departmental Board and then proceeded to evaluate the performance of the candidates during the interviews before it, it considered the views of their superiors under

30 whom they were serving as casual officers as to their performance in their work, it also considered the conclusions of the departmental Board and the views of its Chairman and decided to appoint the interested parties to the permanent (Perm. Budget/ Dev. Budget) post of Executive Engineer, 2nd grade in the Department of Public Works as from 2nd October 1984. Hence the

35 present recourse.

It was contended on behalf of the applicant that the sub judge decision was reached in excess and/or abuse of power in that the applicant is superior in qualifications, merit and seniority to the interested parties, as well as to the twenty candidates who were recommended. 5

I find such argument without merit. In the first place, so long as a decision of an appointing organ is reasonably open, the Court will not substitute its own discretion as regards the selection of the most suitable candidate and in the present instance I would consider that in the circumstances it was so reasonably open to the respondent Commission to decide as it did. In any event the applicant has failed to establish any striking superiority over the interested parties which is also necessary in order to justify any interference by this Court with the sub judge decision. 10 15

The second argument on behalf of the applicant is that the respondent Commission and/or the Departmental Board by not selecting the applicant acted in a discriminatory way towards him, subjecting him thus to unequal treatment vis a vis the interested parties. I consider that such argument is without substance; the selection by the departmental Board of other candidates instead of the applicant does not amount to unequal treatment or discrimination but was done in the course of the proper exercise of the duties assigned to it under the Law. Furthermore the selection of anyone candidate instead of another does not amount to unequal treatment or discrimination as regards those not selected but is a part of the normal process of selecting the best candidate for a particular post. 20 25

It was further argued that the respondent Commission acted under a misconception of fact in that it was misled by the departmental Board as to who the most suitable candidates were by not recommending the applicant who was thus not considered. 30

It does not transpire from the record of the proceedings of the

respondent Commission that there is any misconception as suggested. The applications of all candidates were before the respondent Commission. Moreover, it is clear, since it examined the complaints of the applicant and six others about their not having been recommended by the departmental Board, that they were so considered but it was concluded that in the circumstances the departmental Board had reasonably considered those recommended as superior and even though it is stated by the respondent Commission that it "adopted the conclusions" of the departmental Board, from a perusal of the minutes of the proceedings it cannot be concluded that they felt obliged to do so or that they fettered their discretion. Relevant to this is what was stated in the case of *Kramvis v. Public Service Commission* (1986) 3 C.L.R 1243 at 1249.

"Examination of the record of the proceedings before the respondents suggests the following: The P.S.C. adopted the conclusions of the Departmental Committee and confined their inquiry to the suitability of the candidates shortlisted by the Departmental Committee. They did so, as may be surmised from their minutes, as a matter of discretion, not out of any obligation to confine their inquiry to those candidates only."

Finally it was contended that the sub judice decision lacks any or due reasoning in that the Departmental Board in its conclusions and recommendations failed to give any reasoning as to how it reached such conclusions.

I consider that the sub judice decision as well as the conclusions and recommendations of the Departmental Board are adequate and duly reasoned and that such reasoning is borne from the decision itself as well as from the material of the file. This ground must also fail.

For the reasons stated above 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.*