

1988 January 21

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SAVVAS EFTYCHIOU AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Cases Nos. 184/84, 192/84, 217/84, 280/84, 282/84, 302/84).

Public Officers—Promotions—Confidential reports—Circular 491/79 concerning their preparation, Reg. 9—Contravention of—Effect—Republic v. Argyrides (1987) 3 C.L.R. 1092.

5 In reaching the sub judice decision to promote the interested parties to the post of Assistant Land Officer in the Department of Lands and Surveys great weight was attached by the Commission to the confidential reports in respect of the candidates.

10 In a great number of confidential reports in respect of some of the interested parties the countersigning officers effected changes to the benefit of such parties in a manner, contrary to Reg. 9* of Circular 491/79, whilst in some of the applicants, they effected changes to their detriment, in the same manner as aforesaid.

15 Held, *annulling the sub judice decision*: (1) The effect of the non compliance by countersigning officers with regulation 9 above, has already been decided by the Full Bench of this Court in the case of *The Republic v. Argyrides* (1987) 3 C.L.R. 1092.

(2) Following the same approach, the Court reached the conclusion that, in the present cases too, as the assessments in a great number of

* Quoted at pp. 64-65 post.

confidential reports were effected by the countersigning officers contrary to the provisions of regulation 9, above, and in a manner affecting the general picture of the candidates, which tantamounts to an illegality and violates the provisions of Article 28 of the Constitution, and as the Commission had relied on such reports in selecting the most suitable candidates for promotion, the sub-judice decision has to be annulled. 5

*Sub judice decision annulled.
No order as to costs.*

Cases referred to:

- Republic v. Argyrides* (1987) 3 C.L.R. 1092; 10
- Papamichael v. Republic* (1987) 3 C.L.R. 1113;
- Stylianides v. Republic* (1987) 3 C.L.R. 1123;
- Theophanous v. Republic* (1987) 3 C.L.R. 1574;
- Xeros v. Republic* (1987) 3 C.L.R. 1322.

Recourses. 15

Recourses against the decision of the respondent to promote the interested parties to the post of Assistant Land Officer in preference and instead of the applicants.

- A. *Eftychiou*, for applicant in Case No. 184/84.
- A. *S. Angelides*, for applicants in cases 192/84 and 282/84. 20
- E. *Lemonaris*, for applicant in Case No. 217/84.
- C. *Koushios*, for applicant in Case No. 280/84.
- A. *Demetriades*, for applicant in Case No. 302/84.
- R. *Cavriellides*, Senior Counsel of the Republic, for the respondent. 25

N. Cleridou (Mrs.), for interested party Chr. Ioannou.

Cur. adv. vult.

LORIS J. read the following judgment. By means of the present recourses, which were heard together as they present
5 common legal issues, the applicants challenge the decision of the respondent Public Service Commission to promote, instead of them, other officers (to be referred to hereinafter as the "interested parties") to the post of Assistant Land Officer in the Department of Lands and Surveys.

10 By means of recourse 192/84 the applicants challenge the promotions of all fourteen interested parties whose names appear in Schedule "A" attached to the recourse; by means of recourses 184/84, 217/84, 280/84, 282/84 the applicants challenge the promotions of all interested parties except interested party G. Sav-
15 vides, and by means of recourse 302/84 the applicants challenge only the promotions of interested parties Chr. Ioannou, N. Kouloumos, S. Zenios and A. Kourousides.

As the post of Assistant Land Officer is a promotion post, when the filling of fourteen vacancies in such post was approved
20 by the Minister of Finance, a Departmental Committee was constituted, pursuant to the provisions of section 36 of the Public Service Laws 1967 to 1983, for the recommendation to the Public Service Commission of those candidates eligible for promotion.

The Departmental Committee met on 15 December 1983 and
25 having considered the seniority, confidential reports and qualifications of 117 candidates, recommended, in alphabetical order, 56 candidates, including the applicants and the interested parties.

Regarding the confidential reports of the candidates the mem-
bers of the Departmental Committee stated that in some of them
30 they noticed great fluctuations in the evaluation of the candidates from one year to another without any comment being made or any explanation being given in such reports.

The Public Service Commission at its meeting of 13 February 1984, having heard the views and recommendations of the Director of the Department of Lands and Surveys and having taken into account the conclusions of the Departmental Committee and all relevant material contained in the personal files and the confidential report files, in respect of the candidates, considered that, on the basis of the established criteria namely merit, qualifications and seniority, the interested parties were superior to the other candidates and decided to promote them as the most suitable to the post concerned. 5 10

From the contents of the relevant minutes of the respondent Commission (see Appendix 15) it appears clearly that great weight was attached by the Commission to the confidential reports in respect of the candidates and specific reference is made to the analytical rating in the reports of some of the interested parties for the last three years as the main reason for selecting them for promotion instead of those recommended by the Director of the Department of Lands and Surveys. 15

Counsel for the applicants in cases 184/84 and 280/84 submitted inter alia, that the confidential reports in the present cases could not constitute a safe criterion and could not be relied on by the respondent Commission, in view of the non compliance by the countersigning officers with the procedure envisaged by means of regulation 9 of the Regulations concerning the preparation of confidential reports, as contained in Circular 491 of 26 March 1979, which reads as follows: 20 25

"9. Το Μέρος V του τύπου Β δέον όπως συμπληρούται υπό του Προσυπογράφου Λειτουργού κατόπιν προσεκτικής μελέτης των επί μέρους βαθμολογιών του Αξιολογούντος Λειτουργού. Εάν ο Προσυπογράφων Λειτουργός διαφωνή ως προς οιαδήποτε των επί μέρους βαθμολογιών του Αξιολογούντος Λειτουργού, συζητεί το θέμα μετ' αυτού και, εάν η διαφωνία εξακολουθή να υφίσταται, δίδει την ιδικήν αξιολόγησιν δι' ερυθράς μελάνης και μονογραφεί ταύτην, αιτιολογών την ιδικήν 30 35

του αξιολόγησιν εις την στήλην των παρατηρήσεων".

5 "9. Part V of Type B should be filled in by the Countersigning Officer after careful consideration of the assessments on each item by the Reporting Officer. If the Countersigning Officer disagrees on the assessment on any item by the Reporting Officer, he discusses the matter with him and if the disagreement continues to exist, he gives his own assessment in red ink and initials same, giving the reasons for his own assessment in the column for remarks".)

10 In particular counsel have pointed out that in a great number of confidential reports, in respect of some of the interested parties, the countersigning officers instead of complying with regulation 9, above, proceeded and made their own assessments, on various items, without having first discussed the matter with the reporting
15 officers concerned and without giving any reasons for their own assessment in the column for remarks and that such changes have resulted in some occasions to the general upgrading of the interested parties in a manner affecting detrimentally the rights of the applicants.

20 On the other hand changes were effected in the same way in confidential reports in respect of some of the applicants with the result that their general assessment was changed to their detriment.

25 I have perused the contents of the confidential reports and it suffices to refer, for the purposes of the present judgment, to some of them only:

30 It appears that in the confidential reports for the years 1980 and 1982 of interested parties G. Eleftheriou, Chr. Theocharides, M. Martides and S. Zenios, changes were effected by the countersigning officers in a number of rateable items, with the result that their general assessment was changed from "very good" to "excellent".

The same procedure was followed in respect of the confidential reports of interested parties G. Kokou and G. Eleftheriou for the year 1981.

No indication appears anywhere to the effect that before effecting the relevant changes the countersigning officers have discussed the matter with the reporting officers, and only in some occasions there appear reasons for such disagreement in the appropriate column. 5

From the confidential report's file of applicant Chr. Chaberis, it appears that the assessments made in his confidential reports for the years 1980, 1981, 1982 and 1983, were effected by the countersigning officer contrary to the provisions of regulation 9, above with result that his general assessment was reduced from "excellent" to "very good" and that only in the report for the year 1983 some reasons are inserted in the appropriate column. 10 15

To the same effect, were the changes effected in the confidential report of applicant Ch. Saporillas for the year 1983, reducing thus his general assessment from "excellent" to "very good".

Also, a great number of changes were effected by the countersigning officers in individual items either in favour of some of the interested parties or to the detriment of some of the applicants but not resulting in the change of their general assessment in respect of the particular year, without having previously discussed the matter with the reporting officers, but I do not intend referring to each one of the reports separately. 20 25

The effect of the non compliance by countersigning officers with regulation 9 above, has already been decided by the Full Bench of this Court in the case of *The Republic v. Argyrides* (1987) 3 C.L.R. 1092 where the following were held at pp. 1098-1099: 30

"Such regulations are not subsidiary legislation in the strict sense but have to be strictly complied with. The deviation by

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 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 safeguarded under Article 28 of the Constitution".

Vide also in this connection the following cases:

(Papamichael v. Republic (1987) 3 C.L.R. 1113; *Stylianides v. Republic* (1987) 3 C.L.R. 1123; *Theophanous v. Republic* (1987) 3 C.L.R. 1574; *Xeros v. Republic* (1987) 3 C.L.R. 1322).

Following the approach adopted by the Full Bench of this Court in *Argyrides* case, (supra), I have reached the conclusion that, in the present cases too, as the assessments in a great number of confidential report were effected by the countersigning officers contrary to the provisions of regulation 9, above and in a manner affecting the general picture of the candidates, which tantamounts to an illegality and violates the provisions of Article 28 of the Constitution and as the Commission had relied on such reports in selecting the most suitable candidates for promotion, the sub-judice decision has to be annulled.

In the circumstances I consider it unnecessary to embark on any other ground raised by counsel in the present proceedings.

In the result all above intituled recourses, tried together, succeed and the sub-judice decision is hereby annulled; no order as to costs.

*Sub-judice decision annulled.
No order as to costs.*