

1966
Jan. 3, 15,
Feb. 19

[TRIANTAFYLLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

SOPHOCLES
CONSTANTINOU
AND ANOTHER
and
THE REPUBLIC OF
CYPRUS
THROUGH THE
PUBLIC SERVICE
COMMISSION

SOPHOCLES CONSTANTINOU AND ANOTHER,
Applicants,
and
THE REPUBLIC OF CYPRUS, THROUGH THE
PUBLIC SERVICE COMMISSION,
Respondent.

(Cases No. 63/65, 78/65).

Public Service—Public Officers—Posts with the Cyprus Telecommunications Authority (CYTA)—Scheme of service—Legitimate interest in the sense of Article 146, paragraph 2, of the Constitution—Recourse against appointment to the post of Telegraph Supervisor—Preliminary objection that applicants did not meet the requirement of legitimate interest within paragraph 2 of Article 146 of the Constitution—Because they were not qualified under the relevant scheme of service for appointment to the post in question—Ruling on that objection—At least one of the applicants has definitely the necessary qualifications—Therefore, he satisfies the requirement of legitimate interest as aforesaid.

See, also, under Administrative Law, infra.

Administrative Law—Legitimate interest required under Article 146, paragraph 2, of the Constitution entitling a person to make a recourse under that Article—Proof of—It is not necessary for an applicant to establish that he has the required legitimate interest entitling him to file a recourse—Such proof must be adduced only if the existence of his legitimate interest is challenged.

See, further, under Public Service above.

Administrative Law—Scheme of service—Cyprus Telecommunications Authority (CYTA)—There is nothing wrong in the Authority qualifying its own schemes of service with a view to protecting the interests of members of its staff already being in its service when a particular scheme of service comes to be made—Therefore, applicant C., although he has not graduated from a recognized secondary school, as required as a rule under the relevant scheme of service, still

should be considered as being duly qualified, because the relevant scheme of service was amended on the 2nd August, 1960, so that employees with continuous service with the Authority prior to the 1st January, 1955, who do not possess the required qualifications as per the schemes of service, are nevertheless eligible for promotion, provided that the Selection and Promotion Board is unanimously satisfied that such employee is capable of satisfactorily carrying out the duties of the post concerned—And provided also that such employee will serve a probationary period of twelve months, to qualify for confirmation to the post.

Article 146 of the Constitution provides:

"1. The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, is contrary to any of the provisions of this Constitution or of any law or.....
.....

2. Such a recourse may be made by a person whose any existing legitimate interest, which he has either as a person or....., is adversely and directly affected by such decision or act or omission".

Cases referred to:

Neophytou and The Republic, 1964 C.L.R. 280.

Ruling.

Ruling on a preliminary objection raised by one of the Interested Parties, in a recourse against the validity of appointments to the post of Telegraph Supervisor, made by the Respondent, to the effect that both applicants do not meet the requirement of legitimate interest under Article 146 (2) of the Constitution, because they were not qualified for appointment under the Scheme of Service for the post in question.

E. Vrahimis (Mrs.), for the Applicants.

M. Spanos, Counsel of the Republic, for the Respondent.

C. Phanos, for the Interested Party, Kakomanolis.

Cur. adv. vult.

1966
Jan. 3, 15,
Feb. 19

—
SOPHOCLES
CONSTANTINOU
AND ANOTHER
and
THE REPUBLIC OF
CYPRUS
THROUGH THE
PUBLIC SERVICE
COMMISSION

The facts sufficiently appear in the ruling delivered by:—

TRIANTAFYLLIDES, J.: In these Cases, counsel for Interested Party Kakomanolis, whose appointment to the post of Telegraph Supervisor, with the Cyprus Telecommunications Authority, is being challenged by the Applicants, has raised the preliminary objection that both Applicants do not meet the requirement of legitimate interest under Article 146(2) of the Constitution, because they were not qualified for appointment under the scheme of service (*exhibit 1A*) for the post in question.

Counsel for the Interested Party has based his objection on the relevant principle laid down, *inter alia*, in *Neophytou and The Republic* (1964 C.L.R. 280); he has submitted that Applicant Constantinou has not graduated from a recognized secondary school, as required under paragraph (a) of the qualifications set out in the relevant scheme of service (*exhibit 1A*) and that Applicant Arsalides has graduated from a school of secondary education which, however, is not a “recognized” one; he, also, does not possess ten years’ experience in general telegraph work within the Authority, as required by paragraph (e) of the qualifications in the scheme of service (*exhibit 1A*).

Regarding Applicant Constantinou, it is conceded by his counsel that he has graduated from the third form only of a secondary school, but it is alleged that he should still be considered as being duly qualified, under *exhibit 1(A)*, because of an arrangement arrived at between the Authority and representatives of its employees on the 2nd August, 1960, which is set out in *exhibits 2 and 2(a)*. Under such arrangement, employees with continuous service with the Authority prior to the 1st January, 1955, who do not possess the required qualifications as per the schemes of service, are eligible for promotion, provided that the Selection and Promotion Board is unanimously satisfied that an employee is capable of satisfactorily carrying out the duties of the post concerned and provided also that such employee will serve a probationary period of twelve months, to qualify for confirmation to the post.

It is common ground that the Selection and Promotion Board, mentioned above, is a body set up within the Authority for the purpose of making recommendations for promo-

tions of the staff of the Authority to existing vacancies; on it are represented the Management and the employees of the Authority through their trade unions.

According to the evidence of the Secretary of the Authority, Mr. Kokkinides, the arrangement contained in *exhibit 2* has been in force and is still in force; it has been communicated to the Public Service Commission which, though it has not signified officially its acceptance, it has, nevertheless, been acting in accordance therewith, if one is to judge from the action taken by the Commission in certain cases.

I am of the opinion that the aforesaid arrangement (*exhibit 2*) does form part of the schemes of service of the Authority in the sense that it qualifies all schemes of service accordingly. Since it is the Authority which makes the relevant schemes of service, I see nothing wrong in the Authority qualifying its own schemes of service for the protection of the interests of members of its staff which are already in its service, when a particular scheme of service first comes to be made, and I have no doubt that the arrangement in question is applicable to all schemes of service of the Authority, whether made before or after its date. In this respect it might be useful to note that it is headed "Clarification of the procedure to be adopted with regard to the applications (*sic*) of the qualifications required as per the Schemes of Service for the promotion of the existing staff".

Of course, it would have been more proper, as regards strict form, if such arrangement were to have been made a proviso to each particular scheme of service itself, but such a consideration alone cannot lead me to holding that as the said arrangement stands it is inapplicable to the schemes of service of the Authority.

Counsel for the Interested Party has argued that the Court should treat the aforesaid arrangement as invalid, because, according to his submission, it conflicts with the principle of equality, in the sense that it tends to favour employees belonging to trade unions and disfavour employees not belonging to trade unions, in view of the fact that it is only natural—according to counsel—that the representatives of trade unions on the Selection and Promotion Board (and non trade-unionists are not represented) will only concur to the making of unanimous recommendations, enabling promotion in spite of the lack of qualifications, only in cases of

1966
Jan. 3, 15,
Feb. 19

—
SOPHOCLES
CONSTANTINOU
AND ANOTHER
and
THE REPUBLIC OF
CYPRUS
THROUGH THE
PUBLIC SERVICE
COMMISSION

1966
Jan. 3, 15,
Feb. 19

SOPHOCLES
CONSTANTINOU
AND ANOTHER
and
THE REPUBLIC OF
CYPRUS
THROUGH THE
PUBLIC SERVICE
COMMISSION

trade-unionists.

Even if, however, such argument were to be factually well-founded I am of the opinion that I cannot treat the arrangement in question as being invalid, through being contrary to the principle of equality, merely because its application may lead to abuses. There is nothing on the face of *exhibit 2* which discriminates against any particular employee of the Authority.

In the light of all the foregoing and in view of the fact that it is common ground that Applicant Constantinou has been in service continuously with the Authority since prior to the 1st January, 1955 and has been unanimously recommended by the Selection and Promotion Board, I find that he was properly entitled to be taken into consideration for appointment to the post in question—notwithstanding the lack of the qualification specified under paragraph (a) of the relevant scheme of service; it follows, that the requirement of legitimate interest, for the purpose of enabling this Applicant to make this recourse, is satisfied.

Coming now to Applicant Arsalides, it is in evidence that he has been working from about 1948 or 1949 at the Flight Information Centre at the Nicosia Airport as a wireless-operator and, since 1961, at the Central Telegraph Office, Nicosia, as a telegraphist. His appointment has been as “telegraphist”, both at the Airport and in the Telegraph Office and, according to the evidence of Mr. Kokkinides, the staff of the Flight Information Centre and the Telegraph Office are interchangeable.

Also, this Applicant has worked as a telegraphist between 1950 and 1951 at the Nicosia Telegraph Office for short periods and has sat in 1949, 1950 and 1951 for examinations which enabled him to obtain increments in the salary-scale for telegraphists.

Part of the service of this Applicant at the Flight Information Centre was under Cable and Wireless Ltd., the predecessors of the Authority.

Mr. Kokkinides has stated, in evidence, that previous service of employees of the Authority with Cable and Wireless Ltd. is taken into account for personnel purposes. He also stated that the work at the Flight Information Centre, though it is not the same as that at the Telegraph Office, is so closely

similar that it can be regarded as general telegraph work.

I am myself, too, of the opinion that it is reasonably possible and proper to construe the term "experience within the Authority" in paragraph (e) of *exhibit I(A)* as including experience with the predecessor concern of such Authority; otherwise in 1965 when the promotions in question were made no candidate could have had the ten years' experience required by the said paragraph (e), because the Authority was only founded in 1956.

I am, further, of the opinion that the work of this Applicant at the Flight Information Centre—though admittedly being wireless-operator's work which is different from that of a telegraphist's—is work which could fairly be regarded as properly relevant to the acquisition of experience in "general telegraph work" as required under the aforesaid paragraph (e) of *exhibit I(A)*.

On the totality, thus, of the material before me, I am of the view that, in the circumstances, this Applicant meets sufficiently the requirement of qualification (e) in *exhibit I(A)*.

Before, however, holding that this Applicant is entitled, under Article 146(2) of the Constitution, to file these proceedings, it would be necessary, also, to find in his favour on the issue of whether or not he satisfies paragraph (a) of *exhibit I(A)*.

On this issue the evidence adduced till now indicates that this Applicant has graduated from a secondary school in Cairo but it is not clear yet whether this school would meet the conditions required before it could be treated in Cyprus as "recognized"; and I would understand the term "recognized" in *exhibit I(A)* to mean a school "recognized" by the appropriate authorities in Cyprus as providing a sufficient standard of secondary education.

The Director of Education of the Ministry of Education, when called to give evidence on this issue by counsel for this Applicant, could not himself inform the Court whether this school would be regarded as a "recognized" one, because he did not have at his disposal, at the time, sufficient information about the school.

But, I suppose, it would be an easy matter to investigate this question further and obtain definite information in due time.

1966
Jan. 3, 15,
Feb. 19

—
SOPHOCLES
CONSTANTINO
AND ANOTHER
and
THE REPUBLIC OF
CYPRUS
THROUGH THE
PUBLIC SERVICE
COMMISSION

1966
Jan. 3, 15,
Feb. 19

—
SOPHOCLES
CONSTANTINOU
AND ANOTHER
and
THE REPUBLIC OF
CYPRUS
THROUGH THE
PUBLIC SERVICE
COMMISSION

The fact that such information was not available before the Court when the sub judice preliminary issue was gone into should not, in my opinion, operate to the prejudice of this Applicant.

It is not necessary for an Applicant to establish affirmatively that he has the necessary legitimate interest entitling him to make a recourse. Such proof need be adduced only if the existence of his legitimate interest is challenged, (*vide* Tsatsos on the Recourse for Annulment, 2nd Edition, p. 35).

The existence of a legitimate interest of this Applicant, entitling him to take proceedings in this matter, has been challenged by a notice of Opposition filed by counsel for the Interested Party on the 24th December, 1965, which was served on counsel for this Applicant on the 31st December, 1965. The hearing on the preliminary issue raised thereby has taken place on the 3rd January and 15th January, 1966. I am of the opinion that it is reasonable and proper to afford more time to counsel for this Applicant to enquire into the question of whether or not the school from which this Applicant has graduated in Egypt is a "recognized" one.

In the meantime, I do not think it proper or necessary to delay the hearing of these Cases further for the purpose.

~~The question of the legitimate interest of this Applicant can conveniently be gone into during such hearing, once all that has remained now is the issue of whether the school from which he graduated would be regarded as a "recognized" one in Cyprus.~~

It may be observed, in concluding this ruling, that this Applicant Arsalides, having not been unanimously recommended by the Selection and Promotion Board for promotion to the post in question, cannot derive any advantage from the arrangement, *exhibit 2*, like Applicant Constantinou.

Order in terms.