

1968
July 13

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DR. PANAYIOTIS
PATTICHIS
AND ANOTHER
v.
REPUBLIC
(MINISTRY OF
EDUCATION AND
ANOTHER)

[STAVRINIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

DR. PANAYIOTIS PATTICHIS & ANOTHER,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF EDUCATION AND ANOTHER,

Respondents.

(Case Nos. 229/66, 235/66).

Public Officers—Appointments and Promotions—Filling vacancies in the post of Inspector of Education, 1st Grade, Department of Education—Principles governing judicial review of appointments and promotions in the public service, restated—Seniority—It is only one of the factors to be taken into account—Not the decisive one—Other factors, such as the candidate's personality viewed in its bearing on his aptitude for the duties concerned—And the appointing authority is entitled to go by the opinion it formed in this respect as a result of its interview with the candidate—The paramount duty of the appointing authority is to select the most suitable candidate—So long as the appointing authority exercised its discretionary powers in conformity with the statutory provisions and the rules and requirements of administrative law generally, including good faith—This Court cannot interfere by substituting its own opinion as to the merits of the candidates for that of the appointing authority—See, also, herebelow.

Public Officers—Appointments and Promotions—"Superior educational qualifications"—Meaning and effect—So long as the appointees possess the educational qualifications required by the scheme of service—No educational accomplishment realised by either of the Applicants and not realised by either of the appointees need have been treated by the appointing authority as important, let alone decisive, even if any weight could be attached to it.

Appointments and Promotions in the public service—Judicial review—Principles applicable—See above.

Promotions in the public service—See above.

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Administrative Law—Discretionary powers of the administrative authorities—Principles upon which alone the Court will interfere—See, also, above.

Discretionary powers of the administrative authorities—Judicial review—Principles applicable—See above.

Seniority—Seniority is only one of the many factors to be taken into consideration in making appointments or promotions in the public service—See above.

Interview—Personal interview of the appointing authority with candidates for appointment or promotion—Significance—Appointing authority entitled to form its own opinion as to the personality of the candidates as a result of its interview with them—See above.

Words and Phrases—“Qualifications”—“Superior educational qualifications”—See above.

Secondary Education—Provision about equivalence of post-graduate study with years of service contained in section 13(3) of the Teachers of Secondary Communal Schools' Law 1963 (Greek Communal Chamber Law No. 7 of 1963)—Scope and effect.

By these recourses the Applicants challenge the validity of the decision of the Respondent 2 Committee of Educational Service whereby they have appointed to the post of Inspector of Education, 1st Grade the Interested Parties instead of, and in preference to, them.

After reviewing the facts and circumstances, of these cases, the Court dismissing the recourses:—

Held, (1). The principles governing the judicial review of appointments, including promotions, in the public service, are illustrated by numerous decisions. Briefly stated they are as follows:

It is the duty of the appointing authority to select and appoint the most suitable candidate. Accordingly seniority is relevant, but not the only, or indeed the main, consideration. The first duty of this Court in reviewing appointments or promotions is to see whether the appointing authority exercised its discretionary power in conformity with statutory provisions and the rules and requirements of administrative law general-

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ly, including good faith. So long as the authority acted within those limits the Court cannot interfere; it cannot substitute its own opinion as to the merits of the candidates for that of the appointing authority.

(2) (a) A point was made about "superior educational qualifications" of the Applicants as compared to those of one of the appointees. By definition a "qualification" is "a quality, accomplishment, etc., which qualifies or fits a person for some office or function". (Shorter Oxford Dictionary). Every diploma or degree signifies an educational accomplishment. But if the course of a study as a result of which it was obtained is not relevant to, or goes beyond what is required for, the efficient discharge of the duties of a particular post, it does not constitute a "qualification" for that post.

(b) Here it is admitted that both appointees possessed the educational qualifications required by the scheme of service. Therefore, no educational accomplishment realised by either of the Applicants and not realised by either of the appointees need have been treated by the Respondent Committee as important, let alone decisive, even if any weight could properly be attached to it.

(3) The remaining two points made only for the Applicant in the second case, *viz.* seniority and "superior total service mark", it is clear from the relevant minute that they have been taken into account by the Respondent committee. On the other hand the Committee was entitled, indeed bound, to have regard to other matters as well, one of them being each candidate's personality viewed in its bearing on his aptitude for the duties of inspector, as to which the Committee was entitled to go by the opinion it formed as a result of its interview with him.

*Both recourses dismissed.
No order as to costs.*

Recourse.

Recourse against the validity of the decision of Respondents 2, Committee of Educational Service, whereby they have appointed to the post of Inspector of Education, 1st Grade, the Interested Parties in preference and instead of the Applicants.

L. Clerides, for the Applicant in case 229/66.

F. Markides and *A. Paikkos*, for the Applicant in case 235/66.

G. Tornaritis, for the Respondents.

Cur. adv. vult.

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The following Judgment was delivered by:-

STAVRINIDES, J.: By a notice published in the official Gazette of the Republic on April 28, 1966, under No. 469, applications were invited by the Committee of Educational Service (hereafter "the committee") for the filling of four vacancies in the post of Inspector of Education, 1st Grade (hereafter "inspector"), two of them relating to "literary subjects" (φιλολογικά μαθήματα). Both Applicants applied in response to that notice and were interviewed by the committee. The vacancies relating to the "literary subjects" were filled by the appointment of Dr. I. Koutsakos and Mr. C. Hadjistefanou (hereafter "the appointees"). Both appointments were made by one and the same decision (hereafter "the subject decision"). The Applicant in case No. 229 seeks to annul both appointments, while the other Applicant only questions the appointment of Mr. Hadjistefanou.

On February 11, 1967, while both instant applications stood fixed for hearing on the 23rd of that month, each appointee was served with a copy of the later one and a notice of the hearing stating that "he could appear on that day and apply for leave to take part in the proceedings as the court might think fit for the protection of his interests". Dr. Koutsakos neither appeared nor took any step in the proceedings. Mr. Hadjistefanou appeared at the hearing but took no part, leaving, as he expressly stated, the defence of his interests to Mr. Tornaritis, who appeared for the Respondents in both applications.

Due to longer delay in the filing and delivery of the opposition in the earlier application, the later one came on for hearing before the other. But after the later application had been partly heard it was agreed by all concerned that "the applications should be heard together", and thereafter this was done.

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The scheme of service is set out in paras. 2 and 3 of the notice referred to, which read:

“2. Duties and responsibilities of the person to be appointed:

- (a) Inspection of secondary schools and inspection and guidance of the teaching staff concerned with his special field (τῆς ειδικότητός του) in accordance with instructions or on the basis of the relevant curriculum;
- (b) active participation in educational conferences and refresher courses (ἐπιμορφωτικά μαθήματα) for the teaching staff of secondary schools generally and more particularly that concerned with his special field;
- (c) any other duties that might be entrusted to him.

3. Qualifications:

A university diploma or degree or certificate or an equivalent school of higher education in the subject lying within his special field qualifying for classification as a secondary school teacher (hereafter simply “teacher”), 1st Grade, under the relevant Law.

Postgraduate training abroad in Education or in a subject connected with the duties of the post lasting at least one academic year or in the case of a holder of a diploma of a Teachers’ Training College or Academy of Education lasting one academic semester.

Successful educational service of at least ten years

Familiarity with modern developments within his special field. Good knowledge of at least one of the main European languages.

Note:

In case none of the otherwise qualified candidates in any particular field has all the required years

of educational service a candidate having at least seven years of such service may be selected from amongst them.”

The material before me is derived from particulars filed by the Respondents (hereafter “the particulars”), taken in conjunction with statements made at the hearing and documents put in as *exhibits*; there has been no dispute as to any fact, and no oral evidence has been adduced. The following information regarding the Applicants and the appointees appears from the particulars and copies of their applications to the committee (*exhibits* 13-16) taken together:

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1. *Dr. Pattichis*

Age	36.
Post held at time of subject decision	Teacher.
Years of service	12.
Academic qualifications	Diploma, University of Athens, λίαν καλῶς; M.A. and Ph.D., Columbia University.

2. *Mr. Kolitsis*

Age	35.
Post held at time of subject decision	Assistant Gymnasium Director.
Years of service	13.
Academic qualifications	Diploma, University of Athens, καλῶς; postgraduate education at Διδασκαλεῖον Μέσης Ἐκπαιδεύσεως Ἀθηνῶν; Ph.D., University of Athens.

3. *Dr. Koutsakos*

Age	31.
Post held at time of subject decision	“Καθηγητής”, Cyprus Academy of Education.
Years of service	15.

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Academic qualifications

Diploma, University of Athens, λίσαν καλῶς; postgraduate education, 1953-56 Universities of Vienna, Bonn and Cologne; "doctorate, University of Athens".

4. *Mr. Hadjistefanou*

Age	30.
Post held at time of subject decision	Assistant Gymnasium Director.
Years of service	16.
Academic qualifications	Diploma, University of Athens, ἀριστα; postgraduate education, 1954-59, University of London; "and for 6 months (1963-1964) in America."

In addition Mr. Kolitsis holds a Diploma in General Studies and one in Mental Health, both from the Ἐθνικὴ Ἑταιρεία Κοινωνικῆς Ἀλληλεγγύης, Athens, obtained after a one-year course of study. The title of the latter diploma sufficiently explains the field of study which led to it; the former diploma was for studies in "spiritual, cultural and national topics viewed from the standpoint of modern sociology and on the basis of the ideals of Greek-Christian civilization" (*exh.* 1). A copy of Mr. Kolitsis's Diploma in Education was put in (*exh.* 3), and particular stress was laid by his counsel on the fact that one of the subjects taught was "Administration and Supervision of Schools" and another "Vocational Guidance". Also a copy of the thesis on the basis of which he was awarded the Ph.D. degree, entitled "On the Proper Names and Surnames of the Cypriots", was put in (*exh.* 5). Finally his counsel put in a "Confidential Note on Teacher" (*exh.* 6), being a report on Mr. Kolitsis's performance during the year 1965-66 showing a total mark of 24 1/2, which compares with the same total mark obtained during the same year by Dr. Koutsakos and a total mark of 24 obtained by Mr. Hadjistefanou. Moreover, it was said by counsel for Mr. Kolitsis, and was not disputed, that in 1958-59 he served as Director of Lefkara Gymnasium,

which does not appear in particulars. All four "diplomas" from the University of Athens were for studies in the Faculty of Philosophy.

The minute of the subject decisions is as follows:

"The committee having taken into account the qualifications of the candidates, the experience, the personality, the official reports on them, the general impression formed from the personal interview, the seniority, the year of compulsory retirement in force for inspectors, as also their creative intellectual work and other activities, selects and appoints (1) Mr. I. Koutsakos as from July 17, 1966, to the existing vacant post and (2) Mr. Constantinos Hadjistefanou as from September, 1966, to the post which will become vacant on account of the termination of Mr. N. Xioutas's contract. These appointments will be permanent on probation for a period of two years, and the placement on the appropriate scale is to be made on the basis of the regulations in force."

The principles governing the judicial review of appointments, including promotions, in the public service, are illustrated by numerous decisions. But there is no need to refer to, still less to discuss, any of those decisions, because the principles which are relevant to the instant applications are not disputed. Briefly stated, they are as follows: It is the duty of the appointing authority to appoint the most suitable candidate. Accordingly seniority is relevant, but not the only, or indeed the main, consideration. The first duty of this court in reviewing promotions is to see whether the appointing authority exercised its discretionary power in conformity with statutory provisions and the rules and requirements of administrative law generally, including good faith. So long as the authority acted within those limits the court cannot interfere; it cannot substitute its own opinion as to the merits of the candidates for that of the appointing authority.

The case for Mr. Kolitsis is, in substance, that he is senior to Mr. Hadjistefanou, the former having been appointed Assistant Gymnasium Director in 1963 and the latter in 1964; that he has "superior educational qualifications" to those of both appointees; that he has a "total service

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mark" higher than that of Mr. Hadjistefanou and equal to that of Dr. Koutsakos; that in the particulars his years of service were given as twelve when in fact they were thirteen, while both appointees were credited with all the years spent by them on postgraduate education, although by s. 13(3) of the Teachers of Secondary Communal Schools Law, 1963, an enactment of the former Greek Communal Chamber which is still in force, only two such years may be counted as years of service "for purposes of promotion".

I may conveniently deal with the last point first. There is nothing in the minute of the subject decision, or otherwise before me, to show or suggest that in making either of the disputed appointments the committee was in any way influenced by any mistake relative to the years of service with which any of the candidates could properly be credited. Regarding specially the point based on s. 13(3) of the 1963 Law, the provision about equivalence of years of postgraduate study with years of service contained in that subsection is, by its express terms, established "for the purposes of this paragraph", which deals with promotion to the post of "Assistant Director", and there is no warrant for applying it to any other appointment.

I now come to the point about "superior educational qualifications". By definition a "qualification" is "a quality, accomplishment, etc., which qualifies or fits a person for some office or function" (Shorter Oxford Dictionary). Every diploma or degree signifies an educational accomplishment. But if the course of study as a result of which it was obtained is not relevant to, or goes beyond what is required for, the efficient discharge of the duties of a particular post, it does not constitute a "qualification" for that post. Here it is admitted that both appointees possessed the educational qualifications required by the scheme of service. Therefore no educational accomplishment realised by Mr. Kolitsis and not realised by either of the appointees need have been treated by the committee as important, let alone decisive, even if any weight could properly be attached to it.

The remaining two points made for Mr. Kolitsis, *viz.* seniority and "superior total service mark" may be dealt in together. The minute of the subject decision includes among the matters taken into account seniority and "the

official reports" on the candidates (*exhibits 6(a) and 7-9*), in which their respective service marks appear; and it is not suggested that such inclusion is false. On the other hand the committee was entitled, indeed bound, to have regard to other matters as well, one of them being each candidate's personality viewed in its bearing on his aptitude for the duties of inspector, as to which the committee was entitled to go by the opinion it formed as a result of its interview with him.

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There is one other matter to be dealt with before I come to a conclusion on Mr. Kolitsis's application. The minute of the subject decision refers to "the year of compulsory retirement for inspectors, as also (the) creative intellectual work and other activities" of the candidates. I must say I was struck by these words. But it has not been suggested on behalf of either Applicant that the committee was influenced either way by any such "other activities"; and as regards "the year of compulsory retirement" it was expressly agreed by the parties that "it has played no part in the appointments in question".

Viewing Mr. Kolitsis's application in the light of the foregoing I am unable to see that the committee in selecting either of the appointees acted in any way which warrants interference by this court. Accordingly he must fail.

I now come to Dr. Pattichis's application. Counsel for him said that the committee in coming to the subject decision "did not have before it all the necessary material to enable it to carry out its paramount duty of selecting the best candidate" and alternatively that "even on the material before it, it was its duty to select" Dr. Pattichis. No attempt was made to substantiate the former proposition, while the latter can only be considered in relation to the two specific points made in support of it.

As in Mr. Kolitsis's case, one was "superior educational qualifications", as to which what I said in dealing with that case is equally applicable, so that nothing need be added.

The other point was that Mr. Hadjistefanou having been in England for five years and in the United States for a semester, "if he obtained no degree or diploma in either country, this is a matter which the committee should have taken against

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him". It is apparent from Mr. Hadjistefanou's application to the committee that he had not obtained a degree or diploma in either of those countries. But it is not fair to draw any inference unfavourable to him, certainly not one reflecting on his fitness for the post of inspector, without giving him a chance of explaining the reason.

Altogether Dr. Pattichis's case turns on the same principles as that of Mr. Kolitsis and therefore he, too, must fail.

Both applications dismissed without costs.

Orders in terms.