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[TRIANTAFYLIDIS, J.]

ERINI MOUROUZI
SOTIROPOULOU

v.
REPUBLIC
(EDUCATIONAL
SERVICE
COMMITTEE)

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

ERINI MOUROUZI SOTIROPOULOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE
EDUCATIONAL SERVICE COMMITTEE OF
THE MINISTRY OF EDUCATION,

Respondent.

(Case No. 206/67).

Greek Secondary Education—Promotion to the post of Assistant Headmistress—Interested Party preferred to the Applicant on ground of superior merit—Notwithstanding the latter's seniority in service—Seniority—It is only one of the many factors to be considered in deciding on the most suitable candidate for promotion—In the present case it was reasonably open to the Respondent Committee to prefer the Interested Party—And in doing so the Respondent cannot be said to have overstepped the proper limits of its discretionary powers.

Administrative Law—Decision—Reasons in support—In the present case the decision itself was duly reasoned, although no reasons were stated in the letter whereby such decision was communicated to the Applicant—Discretion—Proper use of—Promotion—Seniority—See, also, above.

Discretionary powers—Proper use of—No overstepping of the proper limits of such powers—See above.

Promotion—Seniority—Principles applicable—See above.

Seniority—One of the many factors to be duly weighed in deciding on the most suitable candidate for promotion—See, also, above.

Reasoning—Administrative decision duly reasoned—See above.

Practice—Title of proceedings—Respondent not properly described—Amendment—Matter put right by amending title at the stage of delivery of Judgment.

By this recourse the Applicant challenges the validity of a decision taken by the Respondent Committee on the 14th July, 1967 to promote to the post of Assistant Head-

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mistress, Greek Secondary Education, the Interested Party Mrs. K. A. instead of, and in preference, to, the Applicant. This decision was communicated to the Applicant by a letter dated the 13th October, 1967.

It was argued on behalf of the Applicant, *inter alia*, that the decision complained of is not duly reasoned and that, in any case, the Respondent Committee overlooked her five years seniority in the service over the Interested Party.

Dismissing the recourse, the Court:—

Held, (1). It is a fact that no reasons are stated in the letter of the 13th October, 1967 (*supra*); but the *sub judice* decision, itself, as taken on the 14th July, 1967 (see *Exhibit 18*) contains, in my view, sufficient reasons in support thereof.

(2) There can be no doubt that Mrs. K. A. (the Interested Party) was preferred to the Applicant on the ground of superior merit; and such superiority in merit is, *inter alia*, borne out by a comparative reading of the most recent Confidential reports of them.

(3) As repeatedly pointed in earlier decisions of this Court, seniority is one of the material factors to be duly weighed in deciding on the most suitable candidate for promotion. On the basis of all the material before the Respondent, I find that, notwithstanding the greater seniority of Applicant, it was reasonably open to the Respondent to promote the Interested Party instead of the Applicant. In other words, it cannot be said that the Respondent Committee has overstepped the proper limits of its discretion, by preferring the Interested Party to the Applicant.

Recourse dismissed.

No order as to costs.

Cases referred to:

Christodoulou and The Republic, 1 R.S.C.C. 1, at p. 9.

Recourse.

Recourse against the decision of the Respondent to promote the Interested Party, Kleri Aggelides, to the post of Assistant Headmistress in Greek Secondary Education, in preference and instead of the Applicant.

L. Papaphilippou, for the Applicant.

G. Tornaritis, for the Respondent.

L. Demetriades, for the Interested Party.

Cur. adv. vult.

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The following Judgment was delivered by:

TRIANTAFYLIDIS, J.: In this case the Applicant complains, in effect, against a decision, taken by the Respondent Educational Service Committee, on the 14th July, 1967, to promote, with effect as from the 1st September, 1967, to the post of Assistant Headmistress, in Greek secondary education, the Interested Party, Mrs. Kleri Aggelides, instead of the Applicant (see *exhibit* 18).

When the *sub judice* decision was taken both the Applicant and the Interested Party were serving as school mistresses, in Greek secondary education, and were posted at the Famagusta Girls' Gymnasium.

Previous to the taking of the said decision the Respondent had prepared, on the 30th December, 1966, a list of schoolmasters and schoolmistresses serving in Greek secondary education, who were eligible for promotion (see *exhibit* 17). This list, which was drawn up in order of priority, is prefaced by a statement that it was based on the qualifications of the candidates, their past service, their service records, their seniority, as well as on the impression made by them when interviewed by the Respondent. There are twenty-one names in such list; the Interested Party is the tenth on the list, and the Applicant the twenty-first, that is, the last one.

As it has been stated in evidence by Mr. Frixos Vrahas, the Head of the Department of Secondary and Higher Education in the Ministry of Education—who participated as a member of the Respondent at both the relevant meetings of the 30th December, 1966, and of the 14th July, 1967—the aforesaid list was drawn up in order of priority, but, of course, when the occasion for promotions would arise the merits of the candidates would be reconsidered in the light of any further information which would become available by then.

At the time of the promotion of the Interested Party, the Applicant had served as a schoolmistress for sixteen years, namely, since 1951; and it is admitted by the Opposition, which was filed in this case, that her services during that period were satisfactory.

As early as June 1961, the School Committee of Famagusta, on the recommendation of Mr. George Demetriou, the Headmaster of the Famagusta Girls' Gymnasium, had decided

to recommend the Applicant for promotion to Assistant Headmistress (see *exhibit 4*); and it is not in dispute that since 1962 the Applicant was being treated as a candidate for the purpose and was interviewed on a number of times.

The Interested Party was, when promoted as complained of, five years junior in service to the Applicant, having had only about eleven years of past service as a schoolmistress in Greek secondary education.

In October 1962, she was assigned, temporarily, by decisions of appropriate organs of, and acting under, the then existing Greek Communal Chamber, duties of Assistant Headmistress at the aforementioned Gymnasium, for the school-year 1962/1963 (see *exhibit 11*, which is blues 35–36 in *exhibit 23*). Such assignment was not continued for the ensuing school-years because, apparently, due to the enactment, in the meantime, of the Masters of Communal Secondary Education Schools Law, 1963 (Greek Communal Law 10/63) she became disqualified to hold the post of Assistant Headmistress, in view of the fact that she did not possess ten years' past service, as required, for the purpose, under section 13 of Law 10/63; but, for the school-years 1963/1964 and 1964/1965, she was given unofficially duties of Assistant Headmistress by the Headmaster of the Gymnasium in question, Mr. Demetriou. No such duties were given to her during the school-years 1965/1966 and 1966/1967, as she was assigned, by direction of the Education Office, the duties of "Adviser of Students".

Mr. Vrahas has told the Court that, in deciding on the promotions made on the 14th July, 1967—one of which was that of the Interested Party—the Respondent Committee had before it, in relation to the Applicant and the Interested Party, their personal files (see *exhibits 22 and 23* respectively) their Confidential Reports files (see *exhibits 24 and 25* respectively), as well as the general file of the Gymnasium at which they were both serving, and in which file there existed the reports about the functioning of the Gymnasium made by its Headmaster; such reports, for the school-years 1963/1964 to 1966/1967, have been produced and are *exhibit 21* in these proceedings.

As it appears from the personal files of the Applicant and of the Interested Party, both of them had applied in 1966 for promotion to the post of Assistant Headmistress.

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and both were recommended for such promotion by the Headmaster of the Gymnasium concerned, Mr. Demetriou.

From the Confidential Reports file of the Applicant (*exhibit 24*) it appears that, in respect of the school-year 1966/1967, her services were rated with 23 marks out of 25 (see blue 39) and, in the relevant detailed Report, dated the 12th June, 1967 (see blues 36-37), the Applicant was described, by the Inspector, who inspected her work, as a very conscientious schoolmistress, with a stable personality, who by her methodical work was achieving good results, but who would give better results if she could achieve a better approach towards the students. In respect of the school-year 1965/1966 the Applicant's services were rated, again, with 23 marks out of 25 (see blues 34 and 21-22).

In the Confidential Reports file of the Interested Party (*exhibit 25*) it appears that in respect of the school-year 1966/1967 her services were rated with 23 1/2 marks out of 25 (see blues 13-14, which are also *exhibit 10* in these proceedings); the same Inspector, who inspected the Applicant's work, inspected, in respect of the same school-year, 1966/1967, the work of the Interested Party, and he described her as an excellent schoolmistress with a "shining" personality, inspiring the students to do constructive work; he added that she had done a commendable job as an Adviser and in Assisting the Headmaster, and that she had still further prospects of development.

In the Confidential Reports file of the Interested Party there are no Reports in respect of the school-year 1965/1966, and the only Report previous to that in respect of the school-year 1966/1967 is one in respect of the school-year 1962/1963 (see blues 10-11); it appears therein that her services were rated with 22 marks out of 25, and it is stated that she had performed well her duties as Assistant of the Headmaster; that was the school-year during which she had, as aforementioned, been officially assigned duties of Assistant Headmistress.

In respect of the school-year 1962/1963, the Applicant's services were rated with 19 1/2 marks out of 25 (see blues 8-9 in *exhibit 24*).

The first complaint of the Applicant, with which I need deal in this Judgment, is that the *sub judice* decision of the Respondent is not duly reasoned. Such decision was com-

municated to the Applicant by letter dated the 13th October, 1967 (see *exhibit 1*). It is a fact that no reasons are stated in such letter; but the *sub judice* decision, itself, as taken on the 14th July, 1967, (see *exhibit 18*) contains, in my view, sufficient reasoning in support thereof, because it expressly refers to the previous decision of the Respondent, of the 30th December, 1966, (see *exhibit 17*) where the criteria, on the basis of which the Applicant was considered to be a much less suitable candidate for promotion than the Interested Party, are fully set out; I, therefore, cannot find that the decision, which is challenged by this recourse, is not a duly reasoned one.

I shall deal next with the substance of the matter:

There can be no doubt that the Interested Party was preferred to the Applicant on the ground of superior merit; and such superiority in merit is, *inter alia*, borne out by a comparative reading of the most recent Confidential Reports on them, in respect of the school-year 1966/1967.

In this case I do not have to decide whether or not, I would, myself, have promoted the Applicant instead of the Interested Party; all that I have to decide is whether or not it was reasonably open to the Respondent Educational Service Committee to decide to promote the Interested Party, instead of the Applicant, in spite of the greater seniority of the Applicant. As repeatedly pointed out in earlier jurisprudence of this Court, seniority is only one of the material factors to be duly weighed in deciding on the most suitable candidate for promotion. On the basis of all the material before the Respondent I find that, notwithstanding the greater seniority of the Applicant, it was reasonably open to the Respondent to promote the Interested Party instead of the Applicant; in other words, it cannot be said that the Respondent has overstepped the proper limits of its discretion, by preferring the Interested Party to the Applicant.

For all the foregoing reasons this recourse fails and it is dismissed accordingly, but in the circumstances I am not prepared to make any order as to costs.

Before concluding this Judgment I must point out that Respondent's proper description should have been the "Republic, through the Educational Service Committee of The Ministry of Education", and not only "The Educational Service Committee of the Ministry of Education", as it appears

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on the face of the Application in this recourse. On the basis of the precedent of *Christodoulou and The Republic*, 1 R.S.C.C. 1, at p. 9, this matter has been put right, at this stage, by amending the title of the proceedings accordingly; such amendment not being one which could prejudice any party or the interest of justice.

Application dismissed.
No order as to costs.