

1969
May 3

[STAVRINIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHARILAOS
ARISTOTELOUS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

CHARILAOS ARISTOTELOUS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 293/66).

Public officers—Appointments and Promotions—Promotion to the posts of Press Assistant 1st Grade and Publications Assistant, 1st Grade, respectively—Statement by Head of Department (i.e. the Public Information Office) to the effect that one of the Interested Parties did not possess the knowledge of English required by the relevant scheme of service—That statement contradicted by the officer representing the Ministry of Interior—Incumbent on the Respondent Commission to conduct further inquiries and to satisfy itself that the said candidate possessed the required knowledge of English—Failure of Respondent Commission to ascertain for itself whether said candidate satisfied in this respect the scheme of service—Promotion of said candidate annulled on that ground.

Public officers—Scheme of service—“Three years’ experience” requirement in the scheme of service relating to the post of Press Assistant 1st Grade—Meaning of—Term “promotion post” in a government Scheme of Service—Meaning of—Posts of Press Assistant and Publications Assistant 1st Grade—Not “promotion posts” exclusively from the posts of Press Assistant and Publications Assistant 2nd Grade, respectively.

Scheme of Service—Public Service Commission bound to abide by the scheme of service—Consequently, it is incumbent upon the Commission to conduct sufficient inquiries to ascertain for itself whether or not a candidate for appointment or promotion satisfies the requirements of the relevant scheme of service—Failure to act as aforesaid vitiates its decision.

1969
May 3

CHARILAOS
ARISTOTELOUS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

Administrative Law—Administrative decision—Nullity—Failure of the Respondent Commission to carry out sufficient inquiries to ascertain for itself the existence or not of a material fact—Vitiates the relevant decision—See, also, hereabove.

Administrative Decision—Nullity—Failure to make sufficient inquiries vitiates the relevant decision—See above.

Appointments and Promotions—See above.

Promotions—See above.

In this recourse under Article 146 of the Constitution the Applicant a Press Assistant challenges the decision of the Respondent Public Service Commission to promote (or appoint) to the post of Press Assistant, 1st Grade, Mr. P. Loizides and to the post of Publications Assistant, 1st Grade, Mr. Ch. Christodoulou.

It was argued on behalf of the Applicant that, *inter alia*, (a) Mr. P. Loizides, one of the appointees *supra*, did not possess “a minimum of three years’ experience as Press Assistant, 2nd Grade”, as stipulated in the scheme of service relating to the press post (*supra*); (b) the other appointee (i.e. Mr. Ch. Christodoulou) did not possess the qualification of “a very good knowledge of English” required by the scheme of service relating to the publications post (*supra*). With regard to the latter (Mr. Christodoulou), the Respondent Commission had before it on the one hand an express statement by the Director of the Public Information Office that Mr. Christodoulou did not possess the knowledge of English required by the relevant scheme of service; and on the other the statement of Mr. Pantelides, officer representing the Ministry of Interior, to the effect that Mr. Christodoulou’s English was as good as the Applicant’s.

Dismissing the application as regards Mr. Loizides (the first appointee or the first Interested Party) but annulling the decision complained of as regards the other i.e. Mr. Christodoulou, the Court:

Held: As regards Interested Party Mr. Loizides:

(1)(a) Counsel for the Applicant did not dispute that the said Mr. Loizides had had three years’ experience in the discharge of the duties in the press post, but argued that “the natural meaning” of the “three years’ experience” requirement

1969

May 3

—

CHARILAOS
ARISTOTELOUS

v.

REPUBLIC
(PUBLIC SERVICE
COMMISSION)

in the scheme of service relating to the press post is that “the candidate must have been the holder, for at least three years, of the post substantively, or at least on secondment” so that it is not enough if experience of the work of Press Assistant was acquired by someone occupying another post in the Public Information Office.

(b) In my view both the press post and the publications post are “first entry” as well as “promotion” posts. It would therefore be strange if the requirement in question had the restricted meaning contended on behalf of the Applicant. But on any view, if the intention had been that the experience should have been acquired while the officer discharging the duties of the press post was actually holding that post in a substantive capacity, such intention could have been clearly expressed by the use of the word “service” in place of “experience.”

(c) Accordingly I conclude that the requirement is satisfied by “a minimum of three years’ experience” acquired by discharging the duties of that post under some internal Public Information Office arrangement; and that being so, the three years’ period need not be continuous.

(2) The foregoing disposes of the recourse so far as the Interested Party Mr. Loizides is concerned.

Held: As regards Interested Party Mr. Christodoulou:-

(1)(a) The Respondent Commission had before it on the one hand an express statement by the Director of the Public Information Office that Mr. Christodoulou did not possess the knowledge of English required by the relevant scheme of service; and on the other hand Mr. Pantelides’s (the Officer’s representing the Ministry of Interior) statement that Mr. Christodoulou’s English was as good as the Applicant.

(b) In those circumstances it was clearly incumbent on the Respondent Commission, if it thought that in other respects Mr. Christodoulou was a better candidate than, or at least as good a candidate as, the Applicant, to satisfy itself that he possessed the required knowledge of English. If any authority is required for this proposition, which seems to follow logically from the duty of the Commission to abide by the scheme of service applicable in each case, is to be found in several cases of which *Georghiades and The Republic* (1967) 3 C.L.R. 653, is the most apposite. (See the principles laid down by Triantafyllides, J. in that case at pp. 667–69).

(2) In the instant case not the slightest attempt was made by the Respondent Commission to ascertain for itself whether the Interested Party, the said Mr. Christodoulou, satisfied the relevant scheme of service in respect of knowledge of English. For this reason his appointment must be annulled.

1969
May 3
—
CHARILAOS
ARISTOTELOUS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

*Appointment of Interested Party
Christodoulou annulled; other-
wise recourse dismissed; each
side to bear its own costs.*

Cases referred to:

Georghiades v. The Republic (1967) 3 C.L.R. 653 at pp. 667-69;

Papapetrou and The Republic, 2 R.S.C.C. 61;

Hji Louca v. The Republic (1966) 3 C.L.R. 854.

Recourse.

Recourse against the decision of the Respondent relating to promotions to the post of Press Assistant and Publications Assistant 1st Grade, in the Public Information Office.

A. Triantafyllides, for the Applicant.

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

L. Demetriades, for the Interested Party C. Christodoulou.

Cur. adv. vult.

The following judgment was delivered by:—

STAVRINIDES, J.: The Applicant, a Press Assistant, 2nd Grade, in the Public Information Office, applies to (this) Court for the following relief:

“(a) Declaration that the decision of the Respondents to appoint or promote to the post of Press Assistant, 1st Grade, Mr. Priamos Loizides.....in preference and instead of Applicant is *null* and *void* and of no effect whatsoever;

(b) declaration that the decision of the Respondents to appoint or promote to the post of Publication(s) Assistant, 1st Grade, Mr. Christodoulos Christodoulou in

1969
May 3

preference and instead of Applicant is *null* and *void* and of no effect whatsoever.”

—
CHARILAOS
ARISTOTELOUS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

Mr. Christodoulou has been represented in these proceedings by Mr. L. Demetriades, while Mr. Loizides, having originally chosen to conduct his own case, later contented himself with adopting the statement and arguments of counsel for the Respondent.

No evidence having been adduced for either the Applicant, or the Respondent or either of the appointees, the material at my disposal consists of the statements and arguments referred to and documents appended to the opposition, viz. the schemes of service relating respectively to the post of Press Assistant, 1st Grade (hereafter “the press post”), and the post of Publications Assistant, 1st Grade (hereafter “the publications post”); a copy of a letter from the Minister of the Interior to the Chairman, Public Service Commission (hereafter “the Commission”); copies of letters exchanged between the Director of the Public Information Office (hereafter “the Director”) and Mr. A. K. Anastasiou, the Director-General of the Ministry of the Interior; files of confidential reports on the Applicant (*exh.* 1) and the appointees (that relating to Mr. Loizides having been marked *exh.* 2 and that relating to Mr. Christodoulou *exh.* 3); and extracts (in English) from the minutes of four meetings of the Commission.

At the earliest of these meetings, which was held on July 19, 1966, the Commission “after considering the qualifications, experience, seniority and merits of all Press Assistants 2nd Grade, and of all Publications Assistants, 2nd Grade, as reflected in their annual confidential reports and having regard to the recommendations of the Ministry of the Interior, both written and oral, decided “unanimously” “to promote” Mr. Loizides, to the press post and Mr. Christodoulou to the publications post. At the next meeting, held six days later, the Commission “after taking notice of the correspondence exchanged between (the Director) and the Ministry of the Interior (copies of which were sent to the Commission) with regard to the promotion of (Mr. Loizides and Mr. Christodoulou—hereafter ‘the appointees’) decided unanimously to consider these two promotions afresh in the presence of (the Director) on July 25, 1966, at 11.30 a.m.”. The earliest of the letters exchanged between the Director and Mr. Anastasiou of which copies have been appended to the opposition is one

from the former to the latter dated July 21, 1966, the first paragraph of which reads:

“ By my letter..... dated May 16, 1966, I was recommending that Mr. Priamos Loizides, Publications Assistant, 2nd Grade, be promoted to (the post of) Publications Assistant, 1st Grade, and that (the Applicant), Press Assistant, 2nd Grade, be promoted to the post of Press Assistant, 1st Grade. I do not know whether you have passed on these views of mine to the (Commission). However, during our conversation today you informed me that you made recommendations contrary to mine and asked that Mr. Priamos Loizides be promoted to (the post of) Press Assistant, 1st Grade, and be transferred to the Press Section and Mr. Christodoulos Christodoulou, Publications Assistant, 2nd Grade, be promoted to (the post) of Publications Assistant, 1st Grade. I disagree with those recommendations of yours and I put forward my views in what follows:”

1969
May 3
—
CHARILAOS
ARISTOTELOUS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION).

The Director then goes on to give detailed reasons for his views, including, so far as Mr. Christodoulou is concerned, this:

“ Unfortunately he does not know at a good level the English or any other foreign language and admits that he is unable to work on, or it is only with great difficulty that he can apply himself to, the preparation and publication of printed matter in a foreign language, and if he is appointed to the post proposed by you he is considering starting private lessons in order to improve his knowledge of English.”

He adds:

“ Needless to emphasize that all three officers are conscientious, industrious, of good character and devoted to their duties.

In the light of the above I am of the opinion that the probable adoption of your recommendations by (the Commission) would lead to unpleasant consequences and upheaval in the whole functioning of this Office. For this reason I wish to analyse my views before the Commission in question.”

1969
May 3
—
CHARILAOS
ARISTOTELOUS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

The third meeting took place on July 27, 1966, and was attended by the Director and "Mr. D. Pandelides, Assistant Secretary, representing the Ministry of the Interior". The extract relating to this meeting gives an account of statements made in the course of it by both Mr. Pandelides and the Director. Mr. Pandelides is recorded as saying that

"the Director..... has been in the service from June, 1965, whereas the Ministry of the Interior has followed the progress and work of these officers (the Applicant and Mr. Christodoulou) from the time of their appointments. We hold the view that we are in a much better position to Judge the capabilities and suitability of the officers for the vacant post of Publications Assistant."

A little later he is recorded as saying this:

"Regarding (Mr. Christodoulou's) knowledge of English we think that (it is) equally good as that of Mr. Aristotelous and he has many times replaced the Publications Officer and carried on the work alone on his behalf. He is responsible for editing and producing the 'Agrotis', 'Astynomika Chronika', leaflets of the Ministry of Labour and Social Insurance and the Ministry of Agriculture and Natural Resources in Greek and the 'Cyprus Today' in English and other material which is forwarded for publication by other Ministries and Departments."

About knowledge of English the Director is recorded as saying:

"In addition he (the Applicant) has also got the qualification of having knowledge of the English language and because of this he can have better achievements in other fields as well. It is significant that he is now working as responsible for a shift in the Press Section and he prepares with great ease the press communiques both in Greek and English, and in the case of important documents, for instance announcements, statements by the President of the Republic, and responsible Government officials, we turn to him for their translation into English in the same way as we turn to the other three experienced officers, Messrs. Psyllides, Loizides and Kazamias. We never go to Mr. Christodoulou because he cannot make such translations."

With regard to the "Cyprus Today" publication, the Director is recorded as saying:

1969
May 3

—
CHARILAOS
ARISTOTELOUS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

"..... I must clarify that as regards the 'Cyprus Today', which is issued in English, the material of this periodical is written and proved (sic) by a committee which was appointed by the Ministry of Education, and Mr. Christodoulou is the liaison of the Public Information Office and this committee. In accordance with the duties which I have entrusted to him, his work in connection with the 'Cyprus Today' is mainly of a technical and organizing nature."

The decisions questioned by these proceedings were taken at the fourth meeting, held on October 7, 1966, the extract from which, so far as relevant, reads:

"The question of the filling of the vacancies in the posts of Press Assistant, 1st Grade, and Publications Assistant, 1st Grade, was reconsidered by the Commission. After a careful examination of the recommendations of the Ministry of the Interior and of the Director of the Public Information Office and bearing in mind the duties and responsibilities of these posts, as they appear in the scheme of service, and having regard to the experience of all Press Assistants, 2nd Grade, and of all Publications Assistants, 2nd Grade, in press and publications matters as well as to their qualifications, merits and their educational background, decided unanimously that the Commission's regard to these vacancies, i.e. that -

- (a) Mr. P. Loizides be promoted to the post of Press Assistant, 1st Grade; and
- (b) Mr. Chr. Christodoulou be promoted to the post of Publications Assistant, 1st Grade should stand. Their promotion should take effect from October 1, 1966."

The Applicant entered the public service on January 7, 1960, as Press Assistant, 2nd Grade, unestablished, and was established in that post with effect from February 1, 1964. At the hearing Mr. Triantafyllides for him expressly admitted that Mr. Loizides was senior to his client in the service. With regard to Mr. Christodoulou counsel said that he "was first appointed Publications Assistant, 2nd Grade, in 1964". Actually Mr. Christodoulou had served in the Police from

1969

May 3

—

CHARILAOS
ARISTOTELOUS

v.

REPUBLIC
(PUBLIC SERVICE
COMMISSION)

October 17, 1962, till January 31, 1964, and since the following day had been Publications Assistant, 2nd Grade, established. However, as will appear hereafter, nothing turns on seniority as between these two officers.

For the rest counsel for the Applicant relied on the following arguments: (i) regarding the appointment to the press post, (a) that Mr. Loizides did not possess "a minimum of three years' experience as Press Assistant, 2nd Grade", as stipulated in the scheme of service relating to that post and (b) that the press post was a promotion post exclusively from the post of Press Assistant, 2nd Grade, and the publications post a promotion post exclusively from the post of Publications Assistant, 2nd Grade; (ii) regarding the appointment to the publications post, (a) that Mr. Christodoulou did not possess the qualification of "a very good knowledge of English" required by the scheme of service regarding to the latter post and (b) that the Commission "disregarded the recommendation of the Head of Department" in which the Applicant and both appointees were employed, viz. the Director.

It is convenient to deal first with point (i) (b). Nothing has been cited in support of this point, and in my opinion it is an invalid one. It is true that both schemes of service bear the sub-title "Promotion post". But quite apart from the fact that "Promotion post" in a Government scheme of service does not connote any restriction of eligibility to holders of particular posts in the public service but merely implies the exclusion of persons holding no public post, in both the scheme of service relating to the press post and that relating to the publications post there is, under "Qualifications required", a "Note" which reads:

- "(a) Candidates for appointment, who hold a leaving certificate of a five-year secondary school obtained prior to the August 15, 1960; and
- (b) public servants who joined the public service either in a permanent or in a temporary capacity before the December 1, 1961, who hold a leaving certificate of a five-year secondary school or other equivalent qualification, or who, though not holding such a certificate, have a general education of a standard regarded as equivalent to that of a five-year secondary school, will be considered eligible for appointment or promotion to this post if they are otherwise suitable;"

1969

May 3

—
CHARILAOS
ARISTOTELOUS
v.

REPUBLIC
(PUBLIC SERVICE
COMMISSION)

and it seems to me clear from a comparison of (a) with (b) and from the words "appointment or promotion" in the last sentence of each of the "Notes", that the posts in fact were open not only to members of the public service but also to outsiders, so that a fortiori they were open to holders of any public post.

I now come to point (i)(a). Counsel for the Respondent said that Mr. Loizides "did possess the required three years' experience", adding that "Such experience need not have been acquired by continuous service", nor "need it have been acquired while occupying the actual post, whether substantively or on secondment". Mr. Triantafyllides did not dispute that Mr. Loizides had had three years' experience in the discharge of the duties in the press post, but argued that "the natural meaning" of the "three years' experience" requirement in the scheme of service relating to the press post is that "the candidate must have been the holder, for at least three years, of the post substantively, or at least on secondment", so that "it is not enough if experience of the work of Press Assistant was acquired by someone while occupying another post in the Public Information Office". On my view that both the press post and the publications post are "first entry" as well as "promotion" posts it would be strange if the requirement in question had the restricted meaning contended for on behalf of the Applicant. But assuming that view to be wrong, if the intention had been that the experience should have been acquired while the officer discharging the duties of the press post was actually holding that post in a substantive capacity, such intention could have been clearly expressed by the use of the word "service" in place of "experience". Accordingly I conclude that the requirement is satisfied by "a minimum of three years' experience" acquired by discharging the duties of that post under some internal Public Information Office arrangement; and that being so, the three years' period need not be continuous.

The foregoing disposes of the Application so far as Mr. Loizides is concerned.

I now come to point (ii) (a). The Commission had before it on the one hand an express statement by the Director that Mr. Christodoulou did not possess the knowledge of English required by the scheme of service relating to the publications post and that he had admitted as much; and on the other

1969

May 3

—

CHARILAOS
ARISTOTELOUS

v.

REPUBLIC
(PUBLIC SERVICE
COMMISSION)

hand Mr. Pantelides's statement to the effect that Mr. Christodoulous's English was as good as the Applicant's. In those circumstances it was clearly incumbent on the Commission, if it thought that in other respects Mr. Christodoulou was a better candidate than, or at least as good a candidate as, the Applicant, to satisfy itself that he possessed the required knowledge of English. If any authority is required for this proposition, which seems to follow logically from the duty of the Commission to abide by the scheme of service applicable in each case, it is to be found in several cases, of which *Georghiades v. Republic* (1967) 3 C.L.R. 653, is the most apposite. In connection with a question as to an appointee's knowledge of English, Triantafyllides, J. said at pp. 667-68:

“ There is a further reason for which I am of the view that the appointment of this interested party should be annulled and this is that the Commission in appointing him did not carry out a sufficient inquiry regarding the issue of whether or not he was qualified for appointment under the scheme of service for the post concerned (see *exh. 2*).

As laid down in, *inter alia*, *Papapetrou and The Republic* (2 R.S.C.C. 61) the Public Service Commission is bound to comply with the scheme of service relating to a particular post.

In the present instance the scheme of service provided that first entrants, such as interested party Georghiou, had to possess a good knowledge of English of the standard of the English Higher Examination (credit level).”

Then, further down, at pp. 668-69, he said:-

“ The Application..... by the Commission of a scheme of service to the circumstances of each particular case has to be made after sufficient inquiry regarding all material considerations; and in the present case I am of the opinion that such an inquiry has not taken place regarding the possession or not by interested party Georghiou of the required knowledge of the English language.

The Commission had before it a report by the District Labour Officer, Larnaca, that this interested party, a subordinate of his, possessed, on May 11, 1966, a know-

ledge of English lacking behind the required standard (presumably that laid down by the scheme of service) and that such interested party was studying in order to improve his knowledge of English.

It would not be reasonable to assume with any degree of certainty that, through the studies of this interested party until July 4, 1966, he had improved to a sufficient extent his knowledge of English.

The Court has been told that when he was interviewed by the Commission on July 1, 1966—together with twenty other candidates in one single day—the Commission took the view that his knowledge of English was of the required standard; but we know, on the evidence adduced, that such view was taken through putting some questions to this interested party in English, which he answered in English, and through no other inquiry into the matter.

Had it been a question of just a working knowledge of English, one might consider the method by which this interested party was tested regarding his English, when interviewed by the Commission, as possibly a proper one; but when a standard of knowledge of English of the English Higher Examination at the credit level (not only the pass level) was required by the scheme of service, I think that what took place was a most inadequate way of testing his knowledge of English; and especially after the Commission had been warned about the insufficiency of the knowledge of English of this interested party by his district superior at Larnaca, who was in a position to know better about it than any one else.

The question of the standard of knowledge of English of this interested party should have been sufficiently inquired into by the Commission, for the purpose of applying the scheme of service, through an examination written or oral, and not merely by a few questions at the interview.

I find, therefore, that the Commission has not conducted the sufficiently necessary inquiry into a most material aspect of the matter and that, therefore, it exercised its discretion in a defective manner, leading to its decision regarding the appointment of this interested party being wrong in law and in excess and abuse of powers; and,

1969

May 3

—
CHARILAOS
ARISTOTELOUS

v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

1969
May 3

thus, it has to be annulled (see *Hji Louca v. The Republic* (1966) 3 C.L.R. 854).”

—
CHARILAOS
ARISTOTELOUS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

In the instant case not the slightest attempt was made by the Commission to ascertain for itself whether Mr. Christodoulou satisfied the relevant scheme of service in respect of knowledge of English, and for this reason his appointment must be annulled.

Accordingly I need not go into point (ii) (b) or any other question.

In all the circumstances I think that each side should bear its own costs.

Para. (a) of Application dismissed. Under para. (b), Mr. Christodoulou’s appointment annulled.

*Appointment of Interested Party
Christodoulou annulled; other-
wise recourse dismissed; each
side should bear its own costs.*