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[LOIZOU, J.]

—
MICHAEL SANTOS
AND OTHERS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MICHAEL SANTOS AND OTHERS,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 46/67).

Public Officers—Promotions—Recourse against promotion to the post of Airport Assistant 2nd Grade—Scheme of service—Qualifications required thereunder—Lack of—Effect—Two of the four Applicants not possessing the academic qualifications required under the relevant scheme for the promotions in question—Therefore no ‘legitimate interest’ of theirs, within Article 146.2 of the constitution, was adversely affected by the promotion complained of—‘Ability’ as distinct from ‘experience’—‘Ability’ to control labourers—Lack of previous experience to control labourers does not necessarily mean lack of ability in this respect—Experience is one of the means—but not the only—of establishing ability—Applicants failed to prove that it was not open to the Respondent to come to the decision challenged by this recourse.

Promotions—See above.

Scheme of service—Qualifications required thereunder—Lack of—Effect—See above.

Public Service—See above.

Administrative and Constitutional Law—Recourse under Article 146 of the Constitution—‘Legitimate interest’ adversely affected—Article 146.2—See above.

Legitimate interest—Article 146.2 of the Constitution—See above under Public Officers.

Recourse under Article 146 of the Constitution—See above.

Airport Assistants 2nd Grade—Promotions—Scheme of service—Requirement of 'ability to control labourers' as distinct from experience in this respect—Means of establishing 'ability' in the absence of previous experience—See, also, above under Public Officers.

'Ability' as distinct from experience—See above.

Words and Phrases—“ 'Ability' to control labourers” within the scheme of service applicable to promotions to the post of Airport Assistant 2nd Grade—See above under Public Officers; Airport Assistants, 2nd Grade.

By this recourse the four Applicants challenge the decision of the Respondent Public Service Commission to promote the Interested Party to the post of Airport Assistant 2nd Grade in preference and instead of the Applicants or any of them. It appears that Applicants 2 and 4 did not possess the academic qualifications required by the relevant Scheme of Service (which is quoted *post* in the judgment). It was contended by the Applicants, *inter alia*, that the Interested Party had not the required ability to control labourers, whereas the Respondent contended that none of the Applicants had such ability and that, on the whole, the Interested Party was by far the best candidate.

The Court dismissing the recourse: —

Held, I. As to Applicants 2 and 4 (supra):

I have come to the conclusion that Applicants 2 and 4 have failed to prove that they were qualified under the scheme of service and that therefore any legitimate interest of theirs within the provisions of paragraph 2 of Article 146 of the Constitution was adversely affected by the decision challenged by this recourse.

Note: Article 146.2 of the Constitution reads as follows:
“Such a recourse shall be made by a person whose any existing legitimate interest, which he has either as a person or by virtue of being a member of a Community, is adversely and directly affected by such decision or act or omission”.

Held, II. As to Applicants 1 and 3:

(1) It does not appear that either any of the Applicants or the Interested Party had previous experience in controlling

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labourers. But the requirement of the scheme of service is not experience but ability; and whereas ability may be established by the proof of previous experience it cannot, in my view, be said that lack of previous experience entails lack of ability or that previous experience is the only means of establishing ability; and one may assume that, in the absence of previous experience a person's ability to do something can be judged from his knowledge and certain qualities; for instance in the present case such qualities could be firmness or character, power to exercise authority and enforce obedience, personality etc. and the Respondent Commission must no doubt have been in a position to judge to what extent each of the candidates possessed the attributes which would render him able to control labourers as required by the scheme of service.

(2) In the circumstances the Applicants have failed to satisfy me either that the Interested Party did not qualify under the scheme of service or that it was not open to the Respondent Commission in the light of all the circumstances to come to the decision complained of.

In the result this recourse fails.

Recourse dismissed with costs.

Recourse.

Recourse against the decision of the Respondent Public Service Commission to promote the Interested Party to the post of Airport Assistant, 2nd Grade, in preference and instead of the Applicants.

Chr. Artemides for A. Triantafyllides, for the Applicants.

A. Frangos, Senior Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following judgment was delivered by:—

LOIZOU, J.: The relief claimed by the Applicants in the present case is a declaration that the decision of the Respondent, the Public Service Commission, to promote the Interested Party to the post of Airport Assistant, 2nd Grade, in preference and instead of the Applicants or any of them is *null* and *void* and of no effect whatsoever.

The Interested Party, Mr. Phaedon Nicolaou, did not appear and took no part in the proceedings although served with the requisite notice.

The vacancy in the post of Airport Assistant was published in the Gazette of the 13th October, 1966, under Not. No. 1187. The qualifications required are set out at paragraph 3 of the Notification which reads as follows:

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«3. Προσόντα: Ἀπολυτήριον ἑξαταξίου σχολῆς Μέσης Ἐκπαίδευσεως καὶ καλὴ γνώσις τῆς Ἀγγλικῆς. Ἰκανότης νὰ ἐλέγχει ἐργάτας. Μερικὴ κλίσις πρὸς τὴν Μηχανικὴν καὶ προηγουμένη πείρα εἴτε εἰς τὴν ἀεροπορίαν ἢ τὰ δημόσια ἔργα ἢ εἰς ἐμπορικὰς ἐπιχειρήσεις μὲ παρόμοια καθήκοντα θὰ θεωρηθῆ ἕλεος. Ὁ διορισθὸς ὑποχρεοῦται ὅπως ἀποκτήσῃ τὸ Πιστοποιητικὸν τοῦ Τάγματος τοῦ Ἁγίου Ἰωάννου καὶ νὰ ἐπιτύχῃ εἰς καταλλήλους Τμηματικὰς ἑξετάσεις πρὸ τῆς ἐπικυρώσεως τοῦ διορισμοῦ του ἢ ἐντὸς δύο ἐτῶν ἀπὸ τῆς προαγωγῆς του.

Σημ.: (α) Οἱ ὑποψήφιοι διὰ διορισμὸν οἱ κατέχοντες ἀπολυτήριον πενταταξίου σχολῆς μέσης ἐκπαίδευσεως κτηθὲν πρὸ τῆς 15ης Αὐγούστου, 1960, καὶ

(β) Οἱ δημόσιοι ὑπάλληλοι οἱ διορισθέντες εἰς τὴν δημοσίαν ὑπηρεσίαν, εἴτε ὑπὸ μόνιμον εἴτε ὑπὸ προσωρινὴν ιδιότητα, πρὸ τῆς 1ης Δεκεμβρίου, 1961, οἱ κατέχοντες ἀπολυτήριον πενταταξίου σχολῆς μέσης ἐκπαίδευσεως ἢ ἄλλα ἰσοδύναμα προσόντα, ἢ οἱ ὁποῖοι δὲν κατέχουν τοιοῦτον ἀπολυτήριον ἔχουν ὅμως γενικὴν μόρφωσιν ἐπίπεδου θεωρουμένου ὡς ἰσοδύναμου πρὸς τὸ ἐπίπεδον πενταταξίου σχολῆς μέσης ἐκπαίδευσεως θὰ θεωρηθοῦν κατάλληλοι διὰ διορισμὸν ἢ προαγωγὴν εἰς τὴν θέσιν ταύτην, ἂν κατέχουν τὰ λοιπὰ προσόντα».

The grounds of law upon which the Application is based are:

“1. Respondent acted in excess or abuse of powers that the Interested Party does not possess all the requirements of the scheme of service.

2. The Respondent disregarded the superior experience and seniority of the Applicants vis-a-vis the Interested Party who was not in the service before”.

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It is common ground that the post of Airport Assistant, 2nd Grade, is a first entry and promotion post.

All Applicants are in the public service holding the post of Fireman Marshal which post is immediately below that of Airport Assistant, 2nd Grade.

It was contended on the part of the Applicants that they all possess the qualifications required by the scheme of service whereas the Interested Party had no "ability to control labour" and that he also lacked "some mechanical aptitude and previous experience in either aviation, public works or commercial undertaking involving duties of a comparable nature".

From the details regarding the previous record and qualifications of each Applicant submitted on their behalf it appears that Applicants 2 and 4 do not possess a leaving certificate either of a six or a five class secondary school, but that they were both appointed in the public service before the 1st December, 1961; the first question, therefore, that falls for consideration in their case is whether they came under note (b) of the scheme of service i.e. whether they possessed qualifications equivalent to those of a five class secondary school or "general education of a standard that may be regarded as equivalent to that of a five class secondary school". Learned counsel for the Applicants has merely submitted, in the course of his address, that "Applicants 2 and 4 must be considered as coming within note (b) of the scheme of service and to have equivalent general education to that of a five class secondary school because of their previous experience". This allegation was denied by counsel for the Respondent.

Let us now see what their previous record and experience, as put before the Court by their learned counsel, was prior to their appointment to their present posts.

Applicant 2, Pandelis Parperis, learned counsel stated, attended the Ayios Amvrosios school, which is a secondary school, for three years but he cannot remember when this was. From 1941-1946 he served in the Cyprus Volunteer Force. From 1947-1950 he was employed as a waiter at the Nicosia club. From 1950-1954 he was employed by Cyprus Airways as a Head Loader. From 1954-1955 he was employed in the Civil Aviation Department as a Foreman Loader and in 1955 he was appointed to his present post of Fireman Marshal and

during the same year he followed a fire-fighting course with the R.A.F. Nicosia.

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Applicant No.4, Costas Constanti, attended the Pancyprian Gymnasium for two years, from 1940-1942. For another two years he attended the Samuel Commercial school and then from 1945-1948 he worked as a salesman with N.A.A.F.I. From 1948-1954 he was employed as an Assistant Signal Clerk with Cyprus Airways and from 1954-1957 he worked as a labourer in the Civil Aviation Department. In 1957 he was appointed to his present post.

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Both Applicants have in addition obtained the St. John's Ambulance certificate.

I do not think that, on the basis of the above information, one could reasonably conclude that the general education of either of these Applicants is necessarily of a standard that may be regarded as equivalent to that of a five class secondary school; it has not even been stated in the course of the hearing up to which form of the secondary schools at which they attended, each of these Applicants reached during the years of his school attendance.

In the light of the above I have come to the conclusion that Applicants 2 and 4 have failed to prove that they were qualified under the scheme of service and that, therefore, any legitimate interest of theirs was adversely affected by the decision challenged by this recourse.

Of the other two Applicants Applicant 1, Michael Santos, comes under (a) of the note to the scheme of service in that he acquired a leaving certificate from a five class secondary school before the 15th August, 1960, whereas Applicant No. 3, Costas Hindikos is the only one of the Applicants who had a leaving certificate from a six class secondary school.

Applicant 1 graduated the Pedhoulas High School (five class) in 1941; from 1941-1945 he was employed as a Clerk in the Department of Aircraft Maintenance of the R.A.F.; from 1945-1946 he was employed as a fitter in the machines workshop of CYTA; then from 1949-1956 he was employed by Cyprus Airways as Aircraft Assistant Engineer, and from 1956-1958 he was employed in the Water Development Department as an engineer for motor cars and tractors. In 1959 he was appointed in the Civil Aviation Department on a

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weekly basis as a cleaner of aircraft; in 1965 he followed a fire fighting course with the Fire Brigade of Nicosia and in the same year he obtained the St. John's Ambulance certificate.

Applicant 3 graduated a six class secondary school in 1958. From 1959-1963 he was employed as a labourer at the Civil Aviation Department and in 1964 he was appointed to the post of Fireman Marshal. Like Applicant No. 1, in 1965 he followed a fire fighting course with the Nicosia Fire Brigade and in the same year he obtained the St. John's Ambulance certificate.

The Interested Party, on the other hand, graduated a six class secondary school in 1956 and in the same year he took up employment with the R.A.F. in Nicosia where, up to 1963, he worked in the accounts section and thereafter and up to the date of his appointment to the post of Airport Assistant, 2nd Grade, as an Assistant Controller of Aircraft. The duties of this post, I have been told, are connected with the landing and parking of aircraft.

As stated earlier on it was contended on the part of the Applicants that the Interested Party had "no ability to control labour, some mechanical aptitude and some previous experience in either aviation, public works or commercial undertaking involving duties of a comparable nature".

On the part of the Respondent it was contended that none of the Applicants had ability to control labourers and that the Interested Party was by far the best candidate.

The meeting of the Public Service Commission at which the candidates were interviewed was held on the 7th December, 1966; present at the meeting was the Director of the Department of Civil Aviation, who was allowed to put questions of a technical nature to the candidates in order to test their ability and experience. The Public Service Commission considered the ability and qualifications of each candidate and decided that the Interested Party was the best candidate and consequently they offered the appointment to him.

Turning now to the scheme of service once more it should be observed that the essential requirements are (a) a leaving certificate of a six class secondary school (subject to notes (a) and (b) thereof) and good knowledge of the English language and (b) ability to control labourers. The rest of the

qualifications required under the scheme of service would be considered as an advantage.

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From the details put before the Court regarding the previous record of the parties it does not appear that either any of the Applicants or the Interested Party had previous experience in controlling labourers. But the requirement of the scheme of service is not experience but ability; and whereas ability may be established by the proof of previous experience, it cannot, in my view, be said that lack of previous experience entails lack of ability or that previous experience is the only means of establishing ability; and one must assume that, in the absence of previous experience, a person's ability to do something can be judged from his knowledge and certain qualities; for instance in the present case such qualities could be firmness or character, power to exercise authority and enforce obedience, personality etc., and the Public Service Commission must, no doubt, have been in a position to judge to what extent each of the candidates possessed the attributes which would render him able to control labourers.

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In the circumstances of this case the Applicants have failed to satisfy me either that the Interested Party did not qualify under the scheme of service or that it was not open to the Respondent, in the light of all the circumstances, to come to the decision complained of.

In the result this recourse fails.

Recourse dismissed with costs.