

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COSTAS PARTELLIDES,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

—
COSTAS
PARTELLIDES
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

(Case No. 331/68).

Public officers—Appointments and Promotions—Promotion to the post of Postal Officer 1st Grade—On the totality of the circumstances reasonably open to the Respondent Public Service Commission to reach the conclusion to promote the two Interested Parties in preference and instead of the Applicant—In view of the said Interested Parties' superiority in merit as reflected in the relevant confidential annual reports on each candidate and the recommendations of the Head of the Department—Seniority one but not always the vital factor to be considered in effecting appointments or promotions—Secondment—Secondment to a post creates no vested right for the benefit of the holder—Factor only to be taken into account in assessing experience—See, also, herebelow.

Appointments and Promotions—Paramount duty of the Public Service Commission in effecting appointments and promotions: To select the most suitable among the qualified candidates for the post concerned—See, also, hereabove.

Seniority—Public Officers—Appointments and Promotions—Seniority always a factor but not the exclusive vital criterion in effecting appointments and promotions—See, also, hereabove.

Confidential Annual Reports—On candidates for appointments or promotions—See above.

Recommendations by the Head of Department—To be given due weight in appointments and promotions—See above.

Secondment—Secondment to a post creates no vested right of holder—

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Matter to be considered only in assessing experience—See, also, hereabove.

In this recourse, under Article 146 of the Constitution, the Applicant seeks to challenge the validity of the decision of the Public Service Commission dated July 3, 1968, to promote the Interested Parties Mr. Christofides and Mr. Gregoriades to the post of postal officer, 1st Grade, instead of, and in preference to himself.

The Applicant has joined the Public Service on October 11, 1941 and was promoted to the post of postal officer, 2nd Grade, on January 1, 1956. He served in many places in Cyprus, and since August 1, 1967 he was seconded to the post of postal officer, 1st Grade. The Interested Parties have joined the Public Service much later viz. Mr. Christofides on September 1954, as a mail officer, 3rd Grade and Mr. Gregoriades on June 20, 1949. The first was promoted to the post of postal officer, 2nd Grade on January 1, 1956 (viz. on the same date with the Applicant), and the second was promoted to the same post some time later on i.e. on July 1, 1956.

On July 3, 1968 the Respondent Public Service Commission considered at its meeting the merits, qualifications, experience and seniority of many postal officers, 2nd grade, including the Applicant and the two said Interested Parties, and bearing in mind the relevant confidential annual reports as well as the recommendations of Mr. HadjiIoannou, the Director of the Post Office, on each individual officer, reached the conclusion that the Interested Parties were more suited to be promoted.

Dismissing the recourse the Court:—

Held, (1). Seniority is one of the factors to be considered in effecting promotions but not always the vital one.

(2) I repeat what has been stated by this Court in a number of cases, that the secondment to a post does not create a vested right to the holder concerned. Secondment should be taken into consideration for the purposes of assessing the experience of the candidate concerned.

(3) The paramount duty of the Public Service Commission in effecting appointments or promotions, is to select the most suitable candidate for the particular post having regard to the totality of circumstances pertaining to each one of the

qualified candidates, including length of service which, though always a factor to be considered is not always the exclusive vital criterion for such an appointment or promotion.

(4) In the light of the material before me, and after going carefully through the annual confidential reports, and in view of the recommendations by the Head of the Department, especially where ability to control staff is required, I have reached the conclusion that from the totality of all the circumstances before the Public Service Commission, it was reasonably open to them to reach the conclusion to promote the Interested Parties in preference and instead of the Applicant; see *Theodossiou and The Republic*, 2 R.S.C.C. 44.

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Recourse dismissed.

Cases referred to:

Theodossiou and The Republic, 2 R.S.C.C. 44.

Recourse.

Recourse against the decision of the Respondent Public Service Commission to promote the Interested Parties Nicos Christofides and Kypros Gregoriades to the post of Postal Officer first Grade.

Chr. Artemides, for the Applicant.

S. Georghiades, Senior Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following judgment* was delivered by:—

HADJIANASTASSIOU, J.: In this recourse, under Article 146 of the Constitution, the Applicant seeks to challenge the validity of the decision of the Public Service Commission to promote the Interested Parties, Mr. Nicos Christofides and Kypros Gregoriades to the post of postal officer, first grade.

The Applicant has joined the Public Service on October 11, 1941, and has been holding the post of postal officer, second grade, since August 1, 1954. After the re-organization of the Service, the Applicant was given the title of Sub-Postmaster.

* For final decision on appeal see p. 480 in this Part *post*.

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The Applicant has served in many places all over Cyprus, and since August 1, 1967, he was seconded to the post of postal officer, first grade.

The Interested Parties have joined the Service much later, viz., Mr. Christofides on September 1, 1954 as a mail officer third grade, and Mr. Gregoriades on June 20, 1949. The first officer was promoted to the post of postal officer second grade on January 1, 1956, and the second was promoted to the same post on July 1, 1956.

On June 6, 1968, the Council of Ministers authorized the Public Service Commission to fill a number of vacancies and consequential vacancies, see *exhibit 2*. As a result of promotions to higher grades, four consequential vacancies in the post of postal officer, first grade, were created. Under the scheme of service, this post is a promotion post. It reads:—

“ Duties & Responsibilities.

- (a) To be in charge of a district Post Office and responsible for the stocks of stamps and postal orders, preparation of daily cash accounts, conducting correspondence with the Headquarters, and inspection of postal agencies; or
- (b) to be in charge of a section of the General Post Office; and
- (c) to perform any duties which may be assigned to him.

Qualifications:

Leaving certificate of a six-year secondary school; thorough knowledge of post office rules and regulations; a very good knowledge of Greek and English or Turkish and English; ability to control staff and to deal tactfully with the public. Knowledge of French and/or any other European language would be an advantage. He must have passed the examination in Financial Instructions.

Note: Officers who may be promoted before the 31.7.65 will be required to pass the exam. in Financial Instructions within 2 years of promotion.”

On July 3, 1968, the Commission at its meeting, considered the merits, qualifications, experience and seniority of many postal officers, second grade, including the Applicant and the

Interested Parties, as reflected in their annual confidential reports, and bearing in mind the recommendations of Mr. HadjiIoannou, the director of the Post Office, on each individual officer, they reached the conclusion that the Interested Parties were more suited to be promoted; see *exhibit 1*.

Pausing there for a moment, it would be observed from the comparative table, showing the service and qualifications of the parties, *exhibit 4*, that though the Applicant's first appointment to the Public Service precedes that of the Interested Parties by several years, the Applicant and the first Interested Party, Mr. Christofides, were both appointed to the post of postal officer, second grade, on the same date, that is to say, on January 1, 1956, and that the second Interested Party, Mr. Gregoriades, was appointed to the same post six months later, on July 1, 1956. Furthermore, it is clear that Mr. Christofides passed his examination in French, one of the languages required by the scheme of service.

On September 23, 1968, the Applicant, feeling aggrieved because he was not promoted, applied to the Court for the following relief:-

“ Declaration that the decision of the Respondent to promote Messrs. Nicos Christofides c/o Limassol Post Office and Kypros Gregoriades c/o Parcel Post Office Nicosia to the post of postal officer, first grade in preference and instead of Applicant is *null and void* and of no effect whatsoever”.

On January 4, 1969, the opposition was filed and is, in effect, that the decision of the Respondent to promote the Interested Parties was taken after careful consideration of all the facts and circumstances of the case, and upon a careful and proper exercise of the discretionary powers vested in the Respondent.

Counsel, on behalf of the Applicant, has contended that the Public Service Commission has failed to exercise properly their discretionary power, because they have disregarded the superior experience and the striking seniority of the Applicant; and that the Applicant has been seconded to the post of postal officer, first grade, since August 1, 1967.

Counsel for the Respondent, on the contrary, has argued that the Public Service Commission, in the exercise of their discretionary power, can consider the seniority as one of the factors to be taken into consideration, but in view of the annual confidential reports and the recommendations of the Head of

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the Department, the Public Service Commission quite properly promoted the Interested Parties. Furthermore, he contended that in view of the facts and circumstances before them, it was reasonably open to them to reach such decision.

I consider it appropriate time to repeat what has been stated by this Court in a number of cases, that the secondment to a post does not create a vested right to the holder concerned. No doubt, the Public Service Commission quite rightly must take into consideration the secondment for purposes of considering the experience of a public officer; but, in their search to select the best candidate for the post, the Public Service Commission should carefully consider the merits and the qualifications of each candidate and should not give undue weight to the fact that one of the candidates was acting on secondment to that particular post.

It has to be remembered, therefore, that the paramount duty of the Public Service Commission, in effecting appointments or promotions, is to select the most suitable candidate for the particular post having regard to the totality of circumstances pertaining to each one of the qualified candidates, including length of service which, though always a factor to be considered, is not always the exclusive vital criterion for such an appointment or promotion.

In the light of all the material before me, and after going carefully through the annual confidential reports, and in view of the recommendation by the head of the department, especially where ability to control staff is required, I have reached the conclusion that from the totality of all the circumstances before the Public Service Commission, it was reasonably proper and open to them to reach the conclusion to promote the Interested Parties in preference and instead of the Applicant; see *Michael Theodossiou v. The Republic* (P.S.C.) Vol. 2 R.S.C.C. 44. In my view, quite rightly so, even counsel for the Applicant has also conceded, after perusing the annual confidential reports, that the Interested Parties' reports were better than those of the Applicant; and that they had also been recommended for promotion by the head of the department.

For the reasons I have endeavoured to explain, I have reached the conclusion that the Applicant has failed to satisfy the Court that the decision, in question, of the Public Service Commission, was taken in excess or in abuse of their powers, and I would, therefore, dismiss the application.

Application dismissed.