

1969

Jan. 10

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ARISTOS  
MENELAOU

v.

REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

[LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ARISTOS MENELAOU,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent,*

(Case No. 225/67).

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*Public Officers—Promotions—Recourse against promotion to the post of Assessor, Inland Revenue Department—Criteria on the basis of which promotions in general should be made—Seniority, qualifications, merit—The Public Service Law, 1967 (Law 33/67) section 44(2)—Applicant the slightly senior and his qualifications, in general, to a certain extent superior to those of the Interested Party—Merit—Interested Party superior in merit—In cases of promotions, merit should carry the most weight—In any case, Applicant's seniority and qualifications were not such as to outweigh the Interested Party's superior merit—Perfectly open to the Respondent Public Service Commission to come to the decision complained of—Cf. Law 33/67 (supra) sections 44(1)(d) and (2) and 46.*

*Promotions—Criteria—Seniority, qualifications and merit—Section 44(2) of Law 33/67, supra—See above.*

*Merit—Merit in cases of promotions should carry the most weight—See above.*

*Qualifications—In cases of promotions—See above.*

*Seniority—See above.*

*Public Service—See above.*

By this recourse the Applicant seeks the annulment of the decision of the Respondent Commission to promote the Interested Party C.D. to the post of Assessor Inland Revenue Department, in preference to, and instead of, the Applicant,

who bases his case on the ground that the Respondent disregarded his seniority, experience, qualifications and merit.

It appears that both the Applicant and the Interested Party were appointed to the post of Assistant Assessor on the same date, but that in the light of their previous service the Applicant is, by virtue of the provisions of section 46 of the Public Service Law, 1967 (Law 33/67), the slightly senior of the two, although the Interested Party had much longer service in the Income Tax Office. It does, also, appear that the Applicant's qualifications were to a certain extent superior to those of the Interested Party. Those facts were before the Commission when they were considering this case. On the other hand the annual confidential reports on the parties, which were also before the Commission, show that at least in so far as the reports for the last two years are concerned, those of the Interested Party are superior to those of the Applicant. It was argued by counsel for the Applicant, citing section 44(2) of the said Law (*supra*) that in view of the fact that out of the three criteria set out therein, on the basis of which promotions should be determined, the Applicant was superior with regard to two *i.e.* seniority and qualifications, the decision should have been in his favour even if the Interested Party had slightly more merit.

Dismissing the recourse, the Court –

*Held*, (1). In my view, in cases of promotion merit should carry the most weight; but be that as it may, in this particular case, Applicant's qualifications and seniority were not, in my opinion, such as to outweigh the Interested Party's superior merit or to reasonably lead one to the conclusion that the decision of the Respondent Commission was wrong.

(2) In my view, having regard to all the circumstances of this case, it was perfectly open to the Public Service Commission, in the light of the material before them, to come to the decision to which they have and for this reason this application fails and is dismissed accordingly with costs.

*Recourse dismissed with costs.*

#### **Recourse.**

Recourse against the decision of the Respondent Public Service Commission to promote the Interested Party Costas

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Sideras to the post of Assessor in the Inland Revenue Department in preference and instead of the Applicant.

A. *Pantelides*, for the Applicant.

K. *Talarides*, Senior Counsel of the Republic, for the Respondent.

*Cur. adv. vult.*

The following judgment was delivered by:—

LOIZOU, J.: By this application the Applicant seeks a declaration that the decision of the Respondent, the Public Service Commission, to promote the Interested Party, Mr. Costas Sideras, to the post of Assessor, Inland Revenue Department, in preference and instead of the Applicant is *null* and *void* and of no effect whatsoever.

The Applicant bases his case on the ground that the Respondent disregarded his seniority, experience, qualifications and merit.

The Interested Party took no part in the proceedings on his own and was content to leave the matter in the hands of counsel of the Republic appearing for the Respondent.

A comparative table attached to the Opposition (*exhibit 1*) shows the service and qualifications of the Applicant and the Interested Party. It appears from this table, the correctness of which has not been challenged by either party, that both the Applicant and the Interested Party were appointed to the post of Assistant Assessor on the same date i.e. on the 21st January, 1963, but that in the light of their previous service the Applicant is, by virtue of the provisions of section 46 of Law 33 of 1967, the slightly senior of the two, although the Interested Party had much longer service in the Income Tax Office. With regard to the qualifications the Applicant has, *inter alia*, passed sections I and II of the Association of Certified and Corporate Accountants. Learned counsel for the Applicant has enumerated to me the specific subjects which the Applicant has passed as follows:

*Section I*

1. Accounting I
2. Economics
3. Statistics
4. Costing

## Section II

1. Accounting II
2. Audit
3. Mercantile Law
4. Taxation

The above sections obviously relate to the intermediate part of the examination, because in his annual confidential report dated the 16th June, 1960, the Applicant states that he had been exempted from the preliminary examination. I think however, that there is some confusion with regard to the subjects enumerated by counsel, at least in connection with section I, because the Applicant himself in his confidential report of the 21st April, 1961, states that the subjects which he had passed were Mercantile Law, Partnership and Executorship Law and Accounts and General Commercial Knowledge. In his annual confidential report of the 5th March, 1964, he merely states that he passed the intermediate part II of the Association of Certified and Corporate Accountants. But, however that may be, there is no doubt that, as learned counsel for the Respondent has very fairly conceded, the passing of this examination must be considered an advantage even though it may not have been among the requirements of the relative scheme of service.

At the conclusion of the hearing learned counsel for the Applicant applied for leave to produce, at some later stage, the certificate with regard to the examinations which the Applicant had passed; there being no objection from the other side leave was granted to the Applicant to produce the said certificate to the Registrar, with copy to the other party, within one week. The documents which he has produced I have marked as *exhibit 6*. It seems to me that what learned counsel has produced is a time-table showing the subjects and the time allowed for each subject and I have not been able to derive much help from these documents. To sum up the position with regard to the issue of qualifications it does appear, at least on paper, that the Applicant's qualifications, in general, were to a certain extent superior to those of the Interested Party; it is equally clear that this fact was before the Commission when they were considering this case.

The annual confidential reports of the parties (*exhibit 5*), which were also before the Commission, show that at least in so far as the reports for the last two years are concerned;

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those of the Interested Party are superior to those of the Applicant. In addition it has been stated to me that not long before the decision complained of i.e. on the 20th March, 1967, the Applicant was charged for committing, on several occasions between the 1st January, 1964, and the 31st December, 1966, certain acts of insubordinate conduct and or disobedience to his superior officers, improper behaviour and misconduct to the prejudice of discipline, good order and proper administration. The Public Service Commission considered these charges at its meeting of the 28th July, 1967, and acquitted the Applicant on the great majority of the charges, but on a couple of them he was found guilty of improper behaviour and of conduct prejudicial to the good order of the department; as a result he was severely reprimanded and asked to improve his general behaviour and avoid activities which could be misunderstood or be liable to be interpreted as acts of improper behaviour, insubordination or misconduct. The minutes of this meeting have been produced and are *exhibit 4*.

It is not clear from the minutes what weight, if any, the Respondents have attached to this disciplinary conviction and punishment, but they certainly do not seem to have treated the disciplinary offences for which he was punished as being serious enough so as to come within the ambit of section 44(1)(d) of Law 33/67; but, be that as it may, no doubt they could and should take them into account in assessing the merit of the parties.

The meeting of the Public Service Commission at which the decision challenged by this recourse was taken was held on the 7th September, 1967. The minutes of the meeting are *exhibit 3* in these proceedings. It appears from the minutes that there were two vacancies and five candidates (all Assistant Assessors, the post of Assessor being a promotion post). Present at the meeting was the then Head of the department, Mr. Nicos Ionides, who gave his views to the Respondent regarding the candidates. In the case of the Applicant Mr. Ionides thought it fair to avoid expressing his opinion in view of the fact that disciplinary charges were at the time pending against the Applicant in which he (Mr. Ionides) was involved; he did not however fail to inform the Commission of Applicant's qualifications.

In the course of his address learned counsel for the Applicant in order to show that the Applicant was an experienced officer,

stated that in 1966 the Applicant was transferred to Limassol and that when he objected to such transfer the head of his department put forward the ground that the Applicant possessed the necessary experience required by the Limassol office; he also mentioned the fact that in 1963 Applicant was recommended for a scholarship and that in 1965 he was congratulated by the Senior Investigation Officer for his good investigation of an income tax case. Finally he submitted that the Interested Party did not possess two of the requirements of the scheme of service i.e. experience in the examination of accounts and knowledge of U.K. Income Tax Case Law; learned counsel assumed that the Interested Party did not possess these requirements, because, he said, in the section where the Interested Party worked (he was in charge of the employees' section) he did not require this knowledge and because he had not passed any examinations which involved study of U.K. Income Tax Case Law. Both statements were denied by counsel for the Respondent as incorrect and I must say that I cannot attach any weight to learned counsel's statement based on such assumption. I have not been persuaded either that the Interested Party was not qualified under the scheme of service or that the Public Service Commission went wrong in their assessment of the candidates.

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Learned counsel for the Applicant, after citing to me section 44(2) of Law 33/67, submitted that in view of the fact that of the three criteria set out therein, on the basis of which promotions are determined, the Applicant was superior with regard to two i.e. seniority and qualifications, the decision should have been in his favour even if the Interested Party had slightly more merit. In my view, in cases of promotion merit should carry the most weight; but, be that as it may, in this particular case, Applicant's qualifications and seniority were not, in my opinion, such as to outweigh the Interested Party's superior merit or to reasonably lead one to the conclusion that the decision of the Public Service Commission was wrong.

In my view, having regard to all the circumstances of this case, it was perfectly open to the Commission, in the light of the material before them, to come to the decision to which they did and for this reason this Court would not be justified in annulling their decision.

In the result this application fails and is dismissed with costs.

*Application dismissed with costs.*