

1969
Oct. 13

[HADJIANASTASSIOU, J.]

—
VAHAK
GEODELEKIAN
AND ANOTHER
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

VAHAK GEODELEKIAN AND ANOTHER,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case Nos. 40/68, 51/68 and 110/68).

Public Service and Public Officers—Promotions—Promotions to the posts of Inspector and Collector of Customs and Excise—Appointees (Interested Parties) recommended for promotion by Head of Department—Promotions effected on grounds of superior merit—Discretion of the Respondent Public Service Commission reasonably and properly exercised—See, also, herebelow.

Public Service and Public Officers—Promotions—Promotions for more than one grade at a time from the post of Customs and Excise Officer 1st Grade to the posts of Inspector and Collector of Customs and Excise—Neither contrary to section 44(4) and (5) of the Public Service Law, 1967 (Law No. 33 of 1967) nor contrary to the principles of Administrative Law and the principles of the said Public Service Law (supra) embodied in section 30(1)(c) thereof, in view of the provisions of the relevant schemes of service—Not necessary for the Respondent Public Service Commission to proceed as they did and promote the appointees (Interested Parties), in the first instance to the immediately higher grade and from there to the aforesaid post of Inspector and Collector of Customs etc.—The case of Arkatitis and Others (No. 2) v. The Republic (1967) 3 C.L.R. 429, distinguished.

Promotions and appointments in the public service—Paramount duty of the appropriate authority (viz. the Public Service Commission) to select the best candidate—The case of Theodossiou and The Republic, 2 R.S.C.C. 44 followed.

Appointments and promotions in the public service—See hereabove.

Schemes of Service—Public Service Commission—Bound by all Schemes of Service in the absence of any organic Law on the subject—The Public Service Law, 1967 (Law No. 33 of 1967) section 29(1).

Public Service Commission—See hereabove.

Customs—Promotions to the posts of Inspector and Collector of Customs—See hereabove.

The facts sufficiently appear in the judgment of Hadji-anastassiou, J.

Cases referred to:

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

Arkatitis and Others (No. 2) v. The Republic (1967) 3 C.L.R. 429;

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

Recourse.

Recourse against the validity of promotions effected by the Respondent Public Service Commission to the posts of Inspector of Customs and Collector of Customs and Excise.

Fr. Markides with *A. Triantafyllides*, for the Applicants.

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

L. Clerides, for the Interested Party, *P. Antoniou*.

C. Myrianthis, for the Interested party, *A. Philippou*.

Cur. adv. vult.

The following judgment* was delivered by:—

HADJIANASTASSIOU, J.: The Applicants, Vahak Geodelekian and Ali Djemal, in these proceedings, under Article 146 of the Constitution, seek to challenge the validity of the decision of the Public Service Commission to promote the Interested Parties Messrs. Petros Antoniou, Andreas Lardis and Chr. Parlas, to the post of inspector of customs; and Fidias Kyprianou,

* For final decision on appeal see (1970) 2 J.S.C. 214 to be published in due course in (1970) 3 C.L.R.

1969
Oct. 13
—
VAHAK
GEODELEKIAN
AND ANOTHER
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

1969
Oct. 13

—
VAHAK
GEDELEKIAN
AND ANOTHER
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

Anastassis Philippou, George Angelides and Costas Papadakis to the post of collector of customs & excise.

The first Applicant has joined the public service on April 1, 1937, as a customs and revenue officer, 6th grade; and on January 1, 1964, he became an assistant collector of customs. The second was a co-operative Department employee from 1940 to 1941; in June, 1941, he became a customs and revenue officer, 6th grade; and on January 1, 1964, he was promoted to the post of assistant collector of customs, a post which both Applicants hold until today.

All the Interested Parties have entered the public service much later than the Applicants, and I would like to deal first with Mr. Papadakis, in the sequence followed on the comparative table, *exhibit* 15. He was appointed on March 1, 1946, as a temporary clerk, in the audit department; on May 1, 1947, he became a customs and excise officer, second grade. On March 1, 1959, he was promoted to a first grade officer; and on July 1, 1965, he became an assistant collector of customs. On August 1, 1967, he was again promoted to the post of collector of customs.

Mr. Philippou, on February 15, 1951, was appointed as a customs and excise officer, second grade; on October 1, 1963, he became a first grade officer; on August 1, 1967, he was promoted to an assistant collector of customs; and on December 1, 1967, he became a collector of customs.

Mr. Angelides joined the service on October 1, 1947, as a temporary clerical assistant (customs department); on March 1, 1953, he became a customs and excise officer third grade; on March 1, 1964, he became a first grade officer; on August 1, 1967, he was promoted to the post of assistant collector of customs; and on December 1, 1967, he became a collector of customs.

Mr. Kyprianou was appointed on November 4, 1946, as a temporary clerical assistant (supplies and customs); on February 1, 1952, he became a customs and excise officer second grade; on June 1, 1961, he was promoted to a first grade officer; on August 1, 1967, he was promoted to the post of assistant collector of customs; and on December 1, 1967, he became a collector of customs.

Mr. Parlas joined the service on October 8, 1951, as a temporary clerical assistant (customs); on May 1, 1953, he

became a customs and excise officer, second grade; on June 1, 1961, he was promoted to the post of first grade officer; on August 1, 1967, he became an assistant collector of customs; and on December 1, 1967, he was promoted to the post of inspector.

Mr. Lardis was appointed to the post of temporary excise officer on October 10, 1949; on May 1, 1953, he became a customs and excise officer, second grade; on June 1, 1961, he became a first grade officer. On December 1, 1967, he was promoted to the post of assistant collector of customs; and on December 4, 1967, he became an inspector.

Mr. Antoniou joined the service on May 1, 1947, as a customs and excise officer, second grade; on June 1, 1961, he became a first grade officer; on December 1, 1967, he was promoted to the post of assistant collector of customs; and on December 4, 1967, he became an inspector.

After the re-organization of the structure of the customs and excise department, a number of new posts have been created, and other posts have been abolished under the provisions of Law No. 45 of 1967, which was enacted on July 28, 1967. The Council of Ministers has authorised the filling of all vacancies, with retrospective effect as from August 1, 1967. As the Department of Customs and Excise comes under the Ministry of Finance, the Director-General, Mr. Phylachtis, wrote to the Chairman of the Commission on November 30, 1967, a proposal to proceed with the filling of the vacancies in the post of assistant collector, collector and inspector. This letter, *exhibit* 3, contained also the recommendations of the Director of the Department, with regard to the Interested Parties, in sequence of priority.

On December 4, 1967, the Commission met for the purpose of filling the four vacancies (including three consequential) in the post of collector.

An extract from the minutes of the meeting, *exhibit* 14(a), reads as follows at p. 4:-

“ The post of Collector is a promotion post for officers serving in posts not below the rank of Asst. Collector for not less than 3 years. (Service in the post of Customs & Excise Officer, 1st Grade, will be deemed to be service in the post of Asst. Collector).

1969
Oct. 13
—
VAHAK
GEODELEKIAN
AND ANOTHER
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

1969
Oct. 13
—
VAHAK
GEODELEKIAN
AND ANOTHER
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

In the lower post of Asst. Collector, the following three officers are serving from the dates shown opposite their names:—

V. K. Geodelekian — 1.1.64
A. F. Djemal — 1.1.64
C. J. Papadakis — 1.7.65

The Director of the Dept. of Customs & Excise and the Director-General, Ministry of Finance, recommended Mr. C. Papadakis, on grounds of merit, qualifications and experience. Mr. Philippides stated that Mr. Geodelekian is more senior and his work in his present post is satisfactory. He can do the work in the higher post but the question is how well he can do it. Mr. Djemal on the other hand had been absent from duty and only resumed work 3 months ago. He is not considered suitable for promotion.

The Commission, bearing in mind the above and after considering the merits, qualifications and experience of all Asst. Collectors as reflected in their Annual Confidential Reports, decided unanimously that Mr. C. J. Papadakis was on the whole the best and that he be promoted to the post of Collector w.e.f. 1.8.67.

The other three vacancies to remain unfilled.”

It appears, however, later on at the time of the confirmation of the minutes, on January 12, 1968, a note in handwriting was inserted, and is in these terms:—

“At the time of confirmation of the minutes Messrs. Lapas, Protestos and Louca want to make the following amendment: Mr. Philippides stated clearly that Mr. Geodelekian cannot undertake the responsibilities of the higher post under the re-organization.”

Pausing there for a moment, I would like to observe, that I would be inclined to accept the submission of counsel for the Applicant, that in the absence of any evidence or some sort of explanation by the Respondent, not to rely on the minutes, to the effect that the Applicant could not undertake the responsibilities of the higher post; but at the same time, I would be prepared to take the most favourable view to the Applicant, that he could do the work in the higher post, and that the only question was, how well he could do it.

1969
Oct. 13

—
VAHAK
GEODELEKIAN
AND ANOTHER
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

I would like, further to state, that with regard to the Applicant, Mr. Ali Djemal, his evidence in Court was to the effect that the reasons for being absent from his duties from December 23, 1963, till the end of June, 1967, were due to security reasons of his personal safety due to the well-known recent events in Cyprus. However, in fairness to the Applicant, I would like to express the view, that although he has done his best to remain loyal to his service, nevertheless, he has found himself in such a situation that he could no longer continue with his work. I would, however, disagree with the submission of counsel that the Public Service Commission has failed to go into the personal circumstances of this Applicant when they were dealing with the question of his promotion. It is, of course, true that this Applicant, irrespective of the reasons put forward, which are quite understandable, has stayed away from the service too long; and, furthermore, that he was not considered by the head of the department as suitable for promotion.

The first Applicant, feeling aggrieved, filed the present recourse, No. 40/68, on February 13, 1968, complaining that the Respondents have disregarded his seniority, superior qualifications, experience and merit. He further claimed that the Interested Party, Mr. Papadakis, did not possess all the requirements of the scheme of service.

The opposition was filed on March 21, 1968, to the effect that the decision complained of was properly taken after all relevant facts and circumstances were taken into consideration. Furthermore, paragraph 3 of the facts, relied upon in opposition, was to the effect that Mr. Philippides stated, further, that Mr. Geodelekian could not undertake the responsibilities of the higher post under the re-organization.

It would be pertinent to state that the scheme of service for the post of collector was approved by the Council of Ministers, Decision No. 7248, on November 11, 1967, exercising their powers under the provisions of Article 54(a) & (d) of the Constitution. The qualifications required under the scheme of service (*exhibit 1*), are as follows:—

“Qualifications Required:

An excellent knowledge of law practice relating to all matters for which the department of Customs and Excise has a responsibility. Wide practical experience of the

1969
Oct. 13
—
VAHAK
GEODELEKIAN
AND ANOTHER
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

department's work and having not less than 3 years' service in a senior post or posts not below the rank of Assistant Collector. Ability to encourage, manage and control staff and to deal tactfully but firmly with subordinates and members of the public as necessary. Ability to write clear and balanced reports and to make reasoned submissions on all aspects of the work of the department. A very good knowledge of Greek and English or of Turkish and English. A University diploma or degree or other equivalent qualification in commerce, economics, law (including Barrister-at-Law), or accountancy will be an advantage.

Note: For the purpose of filling any vacancy existing in this post at the time of the approval of this scheme of service, or arising before 1st January, 1968, service in the rank of Customs & Excise Officer, 1st Grade, will be deemed to be service in the post of Assistant Collector."

Counsel for both Applicants have contended that the Public Service Commission have acted in abuse of their powers, because they have disregarded the superior seniority of their clients.

Having considered the qualifications, experience and merit, as reflected in the confidential reports of the parties, I am in agreement with counsel for the Respondents that the decision to promote the Interested Party, Mr. Papadakis, to the post of collector was properly taken by the Public Service Commission after all relevant facts and circumstances were taken into consideration. There is no doubt that the confidential reports (*exhibit 6*) of the Interested Party are definitely better than those of both Applicants; although as regards the qualifications, I take the view that the first Applicant's qualifications are better than those of the Interested Party, particularly so, because Mr. Geodelekian is the holder of an accountancy certificate, which is considered by the scheme of service as an additional advantage.

Following the decision of *Michael Theodossiou and The Republic*, 2 R.S.C.C. 44, it has been stated time after time in a number of administrative Court cases that with regard to promotions, the Public Service Commission in effecting appointments or promotions should 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, was not always the exclusive vital criterion for such appointment or promotion; the recommendation of a Head of Department, or other senior responsible officer, especially where specialised knowledge and ability were required, was a most vital consideration not lightly to be disregarded. If the recommendation could not be acted upon, then the Head of Department, or other officer concerned should be invited by the Public Service Commission to explain his views before it; and, if, nevertheless, the Public Service Commission still felt it could not act on such recommendation, the reasons for not so acting should be clearly recorded in the minutes of the Commission, for the protection of the legitimate interests of the candidates concerned.

1969
Oct. 13
--
VAHAK
GEODELEKIAN
AND ANOTHER
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

It would be observed, that with regard to promotions, there is now a statutory requirement under the provisions of s. 44 of the Public Service Law, 1967 (No. 33 of 1967), adopting the principle formulated in the *Theodossiou* case.

Having given the matter my best consideration with regard to the complaint of the Applicants, and once the Head of the Department has recommended the Interested Party, and that the Public Service Commission has given its due weight in reaching their decision, I take the view, that this Court would not interfere with the discretion of the Public Service Commission; because it was reasonably and properly exercised; and because the Applicants have failed to show that such discretion had been exercised in disregard of the Constitution or of any law or in excess or abuse of power.

With regard to the question raised in the grounds of law, that Mr. Papadakis does not possess all the requirements of the scheme of service, I want to make it quite clear that this point was never argued before me by counsel, and I take it that it has been abandoned; and because of the contention of Mr. Triantafyllides, who was appearing together with Mr. Markides, that para. 1 of the scheme of service was intended to safeguard the rights of those officers, including Mr. Papadakis, who were serving at the time as assistant collectors, but lacked the full period of 3 years required by the said scheme of service. I would, therefore, dismiss the case of the Applicants against the Interested Party Mr. Papadakis.

1969
Oct. 13
—
VAHAK
GEODELEKIAN
AND ANOTHER
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

I shall now revert to the meeting of December 4, 1967, of the Public Service Commission, with regard to the filling of four vacancies in the post of Assistant Collector, which is a promotion post from the lower post of the customs and excise officer, first grade.

The Commission, after considering the merits, qualifications and experience of customs and excise officers, first grade, as reflected in their annual confidential reports, and after hearing the representatives' views on each one of them, and bearing in mind the Ministry's recommendations, decided unanimously that the following four officers be promoted to the post of Assistant Collector w.e.f. 1.8.67:— Messrs. A. Philippou, G. Angelides, Ph. Kyprianou, Chr. Parlas (see *exhibit 14(a)* at p. 5).

On December 5, 1967, the Commission considered further the filling of three vacancies in the post of collector, and one vacancy in the post of inspector. The Commission, after considering the merits, qualifications and experience of all assistant collectors, (including those who were promoted to this post on the previous day) as reflected in their annual confidential reports, and after hearing the representatives' views on each one of them, and bearing in mind the Ministry's recommendations, the Commission decided unanimously that the following officers: Messrs. A. Philippou, G. Angelides, Th. Kyprianou, be promoted to the post of collector, and Mr. Chr. Parlas to the post of inspector, w.e.f. December 1, 1967.

The Commission then considered at the same meeting the filling of four vacancies in the post of Assistant Collector, which were created by the promotion of the officers referred to above; and after considering the merits, qualifications and experience of customs and excise officers, first grade, as reflected in their annual confidential reports, and after hearing again the representatives' views on each one of them, and bearing also in mind the Ministry's recommendations, decided unanimously that Messrs. A. Lardis and P. Antoniou be promoted to the post of Assistant Collector w.e.f. December 1, 1967.

It would be observed that when the case was reopened, Mr. Talarides, on behalf of the Respondent, made a statement on the 22nd July, 1969, to the effect that the "representatives"

referred to in the minutes of December 4, 1967, referred to Mr. Phylachtis, Director-General of the Ministry of Finance and Mr. Philippides, the then Director of the Department of Customs.

On December 8, 1967, the Commission again considered the filling of two vacancies in the post of inspector. After considering the merits, qualifications and experience of all Assistant Collectors (including those who were promoted to this post on December 5, 1967), as reflected in their annual confidential reports, and bearing in mind the views of the Ministry of Finance and the Director of the Department of Customs and Excise, the Commission decided unanimously that Messrs. A. Lardis and P. Antoniou be promoted to the post of inspector, w.e.f. December 4, 1967.

The qualifications required under the scheme of service for the post of inspector appear in *exhibit 1*, and are in these terms:-

“ An excellent knowledge of law practice relating to all matters for which the department of Customs & Excise has a responsibility. Wide practical experience of the department’s work and having not less than 3 years’ service in a senior post or posts not below the rank of Assistant Collector. Ability to write clear and comprehensive directions for the guidance of staff on approved procedures and to advise on technical matters arising from the application of revenue laws etc. Administrative and organizing ability. An excellent knowledge of Greek or Turkish and a very good knowledge of English. A University diploma or degree or other equivalent qualification in commerce, economics, law (including Barrister-at-Law), or accountancy will be an advantage.”

It would be further observed that a note was inserted in the said scheme of service, providing, in paragraph 1, that service in the rank of customs and excise officer, first grade, would be deemed to be service in the post of Assistant Collector.

Furthermore, paragraph 2 provides that the post of inspector is a promotion post for Assistant Collector of Customs and Excise.

Counsel for both Applicants have contended:

1969
Oct. 13
—
VAHAK
GEDELEKIAN
AND ANOTHER
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

1969
Oct. 13

—
VAHAK
GEODELEKIAN
AND ANOTHER
v.

REPUBLIC
(PUBLIC SERVICE
COMMISSION)

- (a) that the decision of the Public Service Commission to promote the six Interested Parties, has been taken as a result of a wrong exercise of their power, because they have disregarded the seniority, merit, experience and superior qualifications of the Applicants, which, under the circumstances, amounted to a distinct abuse of power;
- (b) that the said promotions were made contrary to the *Arkatitis* case (1967) 3 C.L.R. 429, and to the provisions of s. 44(4) & (5) of the Public Service Law, 1967 (Law 33 of 1967);
- (c) that the notes in the said scheme of service, for the post of inspector collector were an enabling provision in order to safeguard the rights of those officers who are already the holders of the post of customs and excise officers, first grade; but, counsel argued, the note cannot be used by the Commission as a pretext to promote the six Interested Parties to the higher post of inspector/collector, particularly so, because the scheme of service is taking into consideration the re-organization of the service;
- (d) that the said promotions offended against the principle of retrospectivity, and were also contrary to the provisions of s. 30(1)(c) of Law 33 of 1967.

Counsel for the Republic, on the contrary, relying on s. 29(1) of the Public Service Law, has submitted:

- (a) that the Public Service Commission was empowered, under the law, to effect those promotions in the way they have done, which was, counsel further argued, to the benefit of the service as a whole;
- (b) that the said scheme of service was of a legislative nature, and was, therefore, binding on the Public Service Commission; counsel further argued that s. 37 of the aforesaid law applied only to the first appointment of an officer to the public service, and not with regard to promotions;
- (c) that there was no need for the Interested Parties to signify to the Public Service Commission their acceptance when they were promoted.

I consider it constructive, at this stage, to deal with certain sections of the Public Service Law, 1967:-

1969
Oct. 13

Section 29(1), which deals with schemes of service, is in these terms:-

—
VAHAK
GEODELEKIAN
AND ANOTHER
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

“ The general duties and responsibilities of an office and the qualifications required for the holding thereof shall be prescribed in schemes of service made by decision of the Council of Ministers.

(2) A scheme of service may provide as a prerequisite to appointment or promotion the passing by candidates of an examination.”

I now turn to s. 30(1) which reads as follows:-

“ For the purposes of appointment or promotion, offices shall be divided into the following categories:-

- (a)
- (b)
- (c) Promotion offices which shall be filled by the promotion of officers serving in the immediately lower grade or office of the particular section or sub-section of the public service, as the case may be.”

Section 37(1), which deals with permanent appointments in the public service, provides as follows:-

“ A permanent appointment shall be effected by a written offer made by the Commission to the person selected for appointment and accepted by him in writing.

(2) The offer shall state the remuneration offered and the other terms and conditions of service attached to the office to which appointment is offered.

- (3)
- (4)
- (5)”.

I shall now deal with s. 44(1), which is in these terms:-

“ No officer shall be promoted to another office, unless -

1969
Oct. 13

—
VAHAK
GEODELEKIAN
AND ANOTHER
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

- (a) a vacancy exists in that office: Provided that in the case of offices with a combined establishment, promotion from the lower to the higher office or grade of that office may be made irrespectively of whether there is a vacancy in the higher office or grade or not, and in accordance with any general directions given by the Council of Ministers in this respect;
 - (b) he possesses the qualifications laid down in the schemes of service for that office;
 - (c) he has not been reported upon in the last two annual confidential reports as unsuitable for promotion;
 - (d)
- (2) The claims of officers to promotion shall be considered on the basis of merit, qualifications and seniority.
 - (3) In making a promotion, the Commission shall have due regard to the annual confidential reports on the candidates and to the recommendations made in this respect by the Head of Department in which the vacancy exists.
 - (4) When an officer is promoted to an office in which he has been acting, his promotion may take effect from the date on which the vacancy occurred or the date from which he was appointed to act, whichever is the later.
 - (5) A promotion shall be effected by a written offer made by the Commission to the officer to be promoted and accepted by him in writing. The offer shall specify, *inter alia*, the date of promotion, the salary payable and the incremental date, if any."

It would be observed that the wording of s. 37 and 45 of our Law is identical with regard to a permanent appointment and to a promotion; and a promotion shall also be effected by a written offer made by the Commission to the officer to be promoted and accepted by him in writing. In the case in hand, it is clear, having been accepted by all concerned that no written offer was made, either by the Commission to the six interested officers to be promoted, or that it was accepted by them in writing when they were promoted to the post of Assistant Collector.

1969
Oct. 13

—
VAHAK
GEDELEKIAN
AND ANOTHER
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

I would like to repeat, that I adopt the principle formulated with regard to the schemes of service in the *Papapetrou* case, 2 R.S.C.C. 61, to the effect that the Public Service Commission is bound, in the absence of any organic law on the subject, by all schemes of service relating to posts in the Republic which have been either expressly or impliedly approved by the Council of Ministers, either specifically or generally. The Commission, therefore, in my view, cannot deviate from such approved schemes of service and must observe their provisions in discharging its duties under the provisions of the Constitution. See also section 29(1) of the Public Service Law, 1967, adopting this principle.

The question, therefore, which is posed before me, is whether the six Interested Parties possessed the essential qualifications under the schemes of service.

In my opinion, taking into consideration the needs for the re-organization of the Service, the true construction of the wording of Note 1 in the said schemes of service, is that it was the intention of the framers of the schemes of service for the post of inspector collector, to safeguard the rights of those officers who, at the time of the approval of the scheme of service or before the 1st January, 1968, were already the holders of the post of Customs and Excise Officer, first grade; furthermore, it was also intended to place the holders of the post on an equal footing with that of the post of an Assistant Collector.

I take the view, that the Public Service Commission, in reading the wording of the note as a proviso, was empowered to consider the holders of the post of Customs and Excise Officer, first grade, as eligible for promotion, since they had the necessary qualifications to be promoted to the post of Collector/Inspector.

I am, therefore, in agreement with the contention of Mr. Clerides, that under the provisions of Note 1, it was not necessary for the Public Service Commission, in conforming with the said schemes of service, to proceed to promote the Interested Parties in the way they have followed, viz. to promote them first to the post of Assistant Collector, but that they were empowered to promote them to the post of Collector/Inspector directly. I would, therefore, state that I would have been prepared to express the view, that the interpretation

1969
Oct. 13
—
VAHAK
GEODELEKIAN
AND ANOTHER
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

given to the wording of the schemes in question was not reasonably open to it, when the Commission thought that it was bound to promote the Interested Parties first to the post of Assistant Collector. However, I would state that this point does not call for consideration, because the complaint of the Applicants relates only to the post of Collector Inspector. Having reached the conclusion that the six Interested Parties possessed all the requirements under the schemes of service, I would also dismiss this contention of counsel for the Applicants.

I find it convenient to deal first with contention (b), because if the answer to this question is in the affirmative, viz. that the Commission, in effecting the promotions of the six Interested Parties, have acted contrary to the provisions of s. 44(5), then that conclusion disposes of the question that the decision of the Commission was taken contrary to the express provisions of the law, and makes it unnecessary to consider the other arguments which were advanced by counsel.

I would begin by recalling that the primary task of administrative law is to provide judicial remedies to the citizen who is adversely affected by administrative actions contrary to law; but at the same time, I would like to reiterate, once again, that having reached the conclusion that the true interpretation of the proviso of the said schemes of service enables the Commission to promote directly the Interested Parties, I have reached the view, that its decision does not in any way contravene the provisions of section 44(5) of the Public Service Law, 1967. This law was enacted on June 30, 1967, to make provision for the functioning of the Public Service Commission, for the appointment, promotion and retirement of public officers, and for conditions of service, disciplinary proceedings and other matters relating to the public service; and, therefore, it is important that its provisions should be observed strictly in the interest of the service.

As the Applicants have conceded in their statement of facts that the promotion of the six Interested Parties was published in the Official Gazette of the Republic on February 1, 1968, I take it, in the absence of any evidence to the contrary, that the provisions of section 44(5) of the said law have been complied with. Whilst on this point, I also desire to comment on *Arkatitis* case, *supra*, which was much discussed before me. I have no quarrel with the principle formulated by the decision

of the Greek Council of State referred to by the learned Judge in *Arkatitis* case, that under the principles of both the Public Service Law and Administrative Law, a promotion for more than one grade at a time was, in the absence of clear legislative provision to that effect, not possible. See also Conclusions from the Jurisprudence of the Greek Council of State, 1929–1959 at p. 346, and Kyriakopoulos on Greek Administrative Law, 4th edn., vol. 3 at p. 315 (note 32). This principle is now embodied in section 30(1)(c) of our Public Service Law, but with due respect to counsel's argument, *Arkatitis* case does not apply to the facts of the present case, and can be, therefore, distinguished for the reasons I have given earlier; particularly so, because of the construction I have given as regards the interpretation of the proviso to the schemes of service, and I agree with counsel for the Republic, that such schemes are of a legislative nature.

In the light of the reasons I have endeavoured to advance, I would also dismiss contention (b) of counsel for the Applicants.

I would like, however, before proceeding to consider the other arguments of counsel, to place on record, that had I felt that the Public Service Commission, in conforming with the relevant schemes of service has given to them a correct interpretation, and that such interpretation was reasonably open to it on the basis of the wording of the schemes in question including the proviso, then I would have been prepared to express the view that the Commission, in promoting the said six Interested Parties first to the post of Assistant Collector, and then to that of Collector/Inspector, has acted contrary to the express provisions of section 44(5) of the Public Service Law, because there was hardly any time to make a written offer to the officers concerned and for them to accept the offer in writing. Indeed, I would be prepared to annul the decision of the Public Service Commission.

However, I would like to reiterate that, having regard to the conclusions I have already reached in this matter, the only order I should make is that the promotion of the six Interested Parties was not made contrary to the provisions of the law.

As regards submission (a), I would agree with counsel that both Applicants were senior to the six Interested Parties; but, as regards the qualifications, I take the view that Mr. Geodelekian is better qualified than Messrs. Angelides and Antoniou. As regards Mr. Philippou, they are more or less

1969
Oct. 13
—
VAHAK
GEODELEKIAN
AND ANOTHER
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

1969

Oct. 13

—

VAHAK

GEODELEKIAN

AND ANOTHER

v.

REPUBLIC

(PUBLIC SERVICE

COMMISSION)

equally qualified. Mr. Djemal is more or less equally qualified with Messrs. Antoniou and Angelides, but, definitely, he is less qualified than Mr. Philippou. However, both Applicants are less qualified than Messrs. Lardis, Parlas and Kyprianou.

With regard to the confidential reports of the Applicants, in my view, they are not such as to place them, in a striking manner, ahead of the Interested Parties. On the contrary, those of some of the Interested Parties are most impressive, and one, therefore, cannot reach the view that the promotions were decided by the Commission in excess or abuse of power. In this case, the Public Service Commission, in exercising its discretion to select the most suitable candidate for the particular post—because of the re-organization and additional responsibilities—decided to promote the Interested Parties having regard to the totality of circumstances, and, particularly so, because of the merit of each individual officer. Another vital criterion, which, in my opinion, has weighed in the mind of the Commission, was the recommendation of the Head of the Department. I need only add, once again, that with regard to Mr. Djemal, in the mind of his Director, this officer was not fit for promotion.

In the light of what I have already stated, in reviewing the decision of the Public Service Commission, I have reached the view not to interfere with the discretion of the Commission, because it was reasonably and properly exercised; and because, no doubt, its decision was influenced more by the ability, specialized knowledge, and by the superior merit of the Interested Parties; and because the Applicants have failed to show to the Court that the discretion of the Commission has been exercised in disregard of the Constitution or of any law, or in excess or abuse of power.

For these reasons, and under the circumstances, I would also dismiss this contention of counsel for the Applicants.

With regard to contention (d), that the said promotions offended against the principle of retrospectivity, in view of the fact that I have already decided that it was properly and reasonably open to the Commission to do so, I do not think that, in these circumstances, this question requires to be answered, because it does not offend the legal rights of the Applicants.

The order of the Court, therefore, is that these cases are hereby dismissed.

Applications dismissed.