

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Appellant,*

*and*

THEODOROS VONDITSIANOS AND OTHERS,

*Respondents.*

(Revisional Jurisdiction Appeal No. 57).

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*Public Service and Public Officers—Promotions or appointments—Principles applicable in selecting from amongst the candidates—Seniority—In the absence of anything on record to show difference in merit or other reasons sufficient to outweigh the considerable seniority and experience of the Applicant—It was not open to the Public Service Commission to prefer another candidate to the Applicant—Recommendations by the Head of Department—Qualifying examination for promotion—The Public Service Commission ought to have given expressly cogent reasons for preferring a candidate who had not passed the said examinations and for disregarding the said recommendations—For all the above reasons the Public Service Commission (Respondent in the recourse, Appellant in this appeal) held to have not properly exercised its discretionary powers and to have acted contrary to the relevant principles of Administrative Law and in excess and abuse of powers; and also to have failed to give due reasons for its decisions.*

*Promotions (or appointments)—Principles applicable—Seniority—Qualifying examinations—Recommendations by the Head of Department—Due reasoning of the relevant administrative decision—See, also, hereabove under Public Service etc.*

*Discretionary powers—Improper use—Excess and abuse of powers—Acting contrary to the relevant principles of Administrative Law—See, also, hereabove under Public Service etc.*

*Administrative act or decision—Contrary to the relevant principles of Administrative Law; in excess and abuse of powers—See, also, hereabove under Public Service etc.*

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*Reasoning of administrative acts or decisions—Absence of due reasoning—See hereabove under Public Service etc.*

*Abuse and excess of powers—See hereabove under Public Service etc.*

*Public Officers—Promotions (or appointments)—Principles applicable—See hereabove under Public Service etc.*

*Seniority—See above under Public Service etc. etc.*

*Recommendations by the Head of Department—See hereabove under Public Service etc. etc.*

*Examinations—Qualifying examinations—See hereabove under Public Service etc.*

This is an appeal by the Republic through the Public Service Commission against a judgment of one of the Judges of the Supreme Court sitting in the first instance whereby he annulled the Appellant's decision to promote the Interested Parties V. and M. in preference and instead of the Applicant Constantinou. As against the said Interested Party V. the trial Judge found that the recourse of the said Applicant Constantinou should succeed on the ground that the record did not show difference in merit, or other reasons sufficient to outweigh the considerable seniority of the Applicant. As against the second Interested Party the said M. the trial Judge held also that Constantinou's recourse should succeed on the ground that:

“The Respondent (now the Appellant) Public Service Commission appears to have lost sight of the fact that, though he (M.) was exceptionally eligible for promotion—under Note (1) to the schemes of service—even though he *had not yet* passed the departmental qualifying examination, Applicant Constantinou..... had passed such examination. In my opinion in deciding to disregard the relevant recommendations and in preferring contrary to such recommendations, Interested Party M. to Applicant Constantinou, the Respondent (now Appellant) had to give due weight to the fact that the former (M.) unlike the latter (Constantinou), had not yet passed the required qualifying examination, for promotion, and had to give expressly cogent reasons for preferring a candidate who *had not been* found by the appropriate examination, to possess the requisite knowledge and experience to a candidate who had already been so found. In the absence of anything on this

point in the relevant minutes (*Exhibit 2A*) I am forced to the conclusion that the Respondent (*now Appellant*) Public Service Commission has failed to give due weight to a material consideration, and has, in any case, failed to give due reasons for the *sub judice* decision.

For all these reasons (the trial Judge concluded) the recourse of Applicant Constantinou succeeds as against the appointments of the Interested Parties the said V. and M.

It is true that in the minutes of the Respondent (now Appellant) it is stated that, 'eventually,..... the Head of the Department concerned and..... agreed with the conclusions arrived at by the Commission" (viz. the Public Service Commission then Respondent, now Appellant). "But this *ex post facto* blessing..... did not carry with me such weight as to prevent me from annulling, for the reasons set out in this judgment, the appointments of Interested Parties V. and M. as having been made contrary to the relevant principles of Administrative Law and in excess and abuse of powers."

Dismissing the appeal by the Respondent, in the recourse, Public Service Commission, the Court:

*Held*, (1). From this decision (*supra*) the Commission took the present appeal, argued mainly on the ground that the trial Judge erred in applying the principle on which he approached the case as stated in his judgment, by substituting his own discretion for that of the Public Service Commission-Appellant (Respondent in the recourse).

(2) After hearing counsel for the Appellant in a forceful and exhaustive argument we are not persuaded that the appeal is justified. The appeal therefore, fails; and is dismissed with £15 costs.

*Appeal dismissed with costs.*

## Appeal.

Appeal by the Public Service Commission against the judgment of a Judge of the Supreme Court of Cyprus (Triantafyllides, J.) given on February 12, 1969 (Revisional Jurisdiction Cases Nos. 55/68, 71/68, 72/68, 74/68 and 87/68)

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annulling the Appellant's decision to promote the interested parties Vovides and Markides to the post of Customs and Excise Officer, 1st Grade, in preference and instead of Applicant Constantinou.

A. *Frangos*, Senior Counsel of the Republic, for the Appellant.

A. *Triantafyllides*, for the Respondents.

*Cur. adv. vult.*

The judgment\* of the Court was delivered by:—

VASSILIADES, P.: In October 1967 the Public Service Commission had to consider the filling of some 23 vacancies in the post of Customs and Excise Officer, 1st Grade, in the Customs and Excise Department. Thirteen were existing vacancies; and about ten more were likely to be created as a result of promotions in the higher grades (see *exhibit 2A*).

There were fifty candidates; and the Commission considered the case of each of the 50 candidates, as provided in section 44 of the Public Service Law. That is to say the Commission considered these candidates on the basis of merit, qualifications and seniority taking into account the annual confidential reports for each candidate.

In dealing with this rather complicated matter, the Commission had before them *exhibit 9*, which placed the candidates in different categories or grades, within which each candidate in the particular grade was placed in order of merit. In the result, the Commission made appointments for the filling of the vacancies in question, which—as usual in such cases—caused disappointment to a number of the remaining candidates. Some of them filed recourses against the appointments; which were eventually consolidated and heard together as they turned on, practically, the same matter. Similar considerations governed all the consolidated recourses.

The learned trial Judge, in a carefully considered judgment, came to the conclusion that all the recourses, except one (71/68) failed; and upholding the decision of the Public Service Commission in the recourses which failed, dismissed them.

The trial Judge reached his conclusion by approaching the cases on the principle which he stated earlier in his judgment, as follows:—

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\* Judgment appealed against is reported in this Part at p. 83 *ante*.

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“I have approached these cases bearing constantly in mind that I cannot substitute my own discretion in the place of that of the Respondent, and that, therefore, so long as an appointment, as made, was reasonably open to Respondent in the circumstances, then I should, and could, not interfere therewith; moreover, that it was up to the Applicants to satisfy me that any one of the appointments challenged ought to be annulled”.

In two of the cases, the trial Judge found that the recourse of Applicant Constantinou should succeed. As against interested party Vovides, it should succeed on the ground that the record did not show difference in merit, or other reasons sufficient to outweigh the considerable seniority of the Applicant. The relevant part of his judgment reads:—

“On the whole of the material before the Court, and in the absence of any due reasons to the contrary—which I would expect to find duly recorded in the relevant minutes of the Respondent—I fail to see how it was open to the Respondent, in the proper exercise of its discretionary powers, to prefer Interested Party Vovides to Applicant Constantinou, in spite of the greater seniority and experience of the latter over the former, and there being no difference in merit in favour of the Interested Party”.

As against Interested Party Markides, the trial Judge found that Applicant Constantinou’s recourse should succeed on the ground that:—

“The Respondent appears to have lost sight of the fact that, though he (Markides) was, exceptionally, eligible for promotion—under Note (1) to the schemes of service—even though he *had not* yet passed the departmental qualifying examination, Applicant Constantinou (like Interested Party Chrysanthou, too) *had* passed such examination.

In my opinion, (the trial Judge proceeds) in deciding to disregard the relevant recommendations and in preferring, contrary to such recommendations, Interested Party Markides to Applicant Constantinou, the Respondent had to give due weight to the fact that the former, unlike the latter, had not yet passed the required qualifying examination, for promotion, and had to give expressly cogent reasons for preferring, in the circumstances, a candidate *who had not* been found by means of the appropriate

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examination, to possess the requisite knowledge and experience, to a candidate who *had* already been so found.

In the absence of anything on this point in the relevant minutes (*exhibit 2A*) I am forced to the conclusion that the Respondent has failed to give due weight to a material consideration, and has, in any case, failed to give due reasons for its *sub judice* decision.

“For all”—these—“reasons, (the trial Judge concludes) the recourse of Applicant Ch. Constantinou (71/68) succeeds only as against the appointments of Interested Parties Vovides and Markides and it fails in all other respects. All the other recourses fail in toto”.

—And the Judge adds:—

“It is true that in the minutes of the Respondent it is stated that, eventually, Mr. Philippides, the Head of the Department concerned, and Mr. Afxentiou, the representative of the Ministry of Finance (under which comes such Department) ‘agreed with the conclusions arrived at by the Commission’. But this *ex post facto* blessing of the *sub judice* appointment did not carry with me such weight as to prevent me from annulling, for the reasons already set out in this judgment, the appointments of Interested Parties Vovides and Markides, as having been made contrary to the relevant principles of Administrative Law and in excess and abuse of powers.”

From this decision, the Commission took the present appeal, argued mainly on the ground that the trial Judge erred in applying the principle on which he approached the case as stated in his judgment, by substituting his own discretion for that of the Public Service Commission.

After hearing learned counsel for the Appellant in a forceful and exhaustive argument, we are not persuaded that the appeal is justified.

The appeal, therefore, fails; and is dismissed with costs which we fix at £15.—

*Appeal dismissed with costs.*