

1969
Nov. 6

[VASSILIADES, P., TRIANTAFYLIDIS, JOSEPHIDES, STAVRINIDES,
LOIZOU, JJ.]

COSTAS D.
PARTELLIDES
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

COSTAS D. PARTELLIDES,

Appellant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(*Revisional Jurisdiction Appeal No. 60.*)

Public Officers — Promotions — Seniority — Substantially greater seniority of Appellant disregarded without any really cogent reason—All other things being more or less equal Appellant's seniority ought to prevail—Sub judice promotion of Interested Party K. Gr. annulled.

Promotions—Seniority—Substantially greater seniority cannot be without cogent reason disregarded.

Seniority—See supra.

Postal Service—Promotions—To the post of Postal Officer, 1st grade—Supra.

Head of Department—Oral recommendations regarding candidates for promotion—Should be adequately recorded in the minutes of the collective organ concerned (i.e. of the Respondent Public Service Commission).

Collective Organ—Records—Minutes—See supra.

This is an appeal from the judgment of a Judge of this Court dismissing the Appellant's (Applicant's) recourse against the promotions, decided upon by the Respondent Public Service Commission, on July 3, 1968, of the Interested Parties N. Chr. and K. Gr. to the post of Postal Officers, 1st grade, in preference and instead of the Appellant (then Applicant). (See p. 291 in this Part *ante*). Regarding the first Interested Party N. Chr. the Court dismissed the appeal holding that in the circumstances the Respondent Commission were entitled to prefer him to the Applicant (now Appellant).

But as regards the second Interested Party, the above named K. Gr., the Court, allowing the appeal and annulling his said promotion:

Held, (1). After reviewing the facts:

It follows that the total period of seniority of the Appellant over this Interested Party K. Gr. in the post immediately below that of Postal Officer, 1st Grade, was not only six months (as it was erroneously put before the trial Judge) but just under two years.

(2) The Respondent Commission has, nevertheless, promoted to the post of Postal Officer, 1st Grade, Interested Party K. Gr. instead of the Appellant, in spite of the substantially greater seniority of the Appellant, and without any really cogent reason for disregarding such seniority.

(3) All other things being more or less equal the Appellant's seniority ought to prevail.

(4) In the circumstances we are of opinion that it was not reasonably open to the Respondent Public Service Commission to promote interested party K. Gr. instead of the Appellant.

(5) Regarding the general statement in the minutes of the Respondent Commission that they made the promotions complained of relying, *inter alia*, on the "recommendations of Mr. Hadjioannou, the Head of Department, made orally at the particular meeting of the Respondent but without these recommendations being adequately recorded, so as to enable this Court to examine how and why it was reasonably open to the Respondent to act upon them, notwithstanding the greater seniority of the Appellant and the equally good confidential reports,—we are of the opinion that such a general statement in the minutes of the Respondent Commission cannot have the effect of rendering the promotion of Interested Party K. Gr. one which can be treated as having been properly decided upon.

Appeal allowed as regards Interested Party K. Gr. His promotion annulled. Appeal dismissed as regards the other Interested Party N. Chr.

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Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Hadjianastassiou, J.) given on the 26.5.1969 (Revisional Jurisdiction Case No. 331/68) whereby Applicant's recourse against the decision of the Respondent to promote the Interested Parties Nicos Christofides and Kypros Gregoriades to the post of Postal Officer 1st grade, was dismissed.

Chr. Artemides, for the Appellant.

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

The facts sufficiently appear in the judgment of the Court.

VASSILIADES, P.: The judgment of the Court will be delivered by Mr. Justice Triantafyllides.

TRIANTAFYLLIDES, J.: This is an appeal from the judgment of a Judge of this Court, who determined, in the first instance, recourse No. 331/68*, made by the Appellant, against the promotions, decided upon by the Respondent Public Service Commission, on the 3rd July, 1968, of Interested Parties N. Christophides and K. Gregoriades, to posts of Postal Officer, 1st grade.

At the material time, all three of them were Postal Officers, 2nd grade; the Appellant and Interested Party Christophides as from the 1st January, 1956, and Interested Party Gregoriades as from the 1st July, 1956.

In view of these dates the learned trial Judge properly concluded, in the light of how the matter was presented to him, that the Appellant and Interested Party Christophides were of equal seniority and Interested Party Gregoriades was *only* six months junior to Appellant; and the trial Judge proceeded to find that it was reasonably open to the Respondent, in the exercise of its discretionary powers on the basis of the material before it (including the recommendations of the Head of the Department concerned and of the annual confidential reports) to promote the two Interested Parties instead of the Appellant; as a result the Appellant's recourse was dismissed.

During the hearing of this appeal, it has been confirmed that, indeed, Interested Party Christophides and the Appellant

* Reported in this Part at p. 291 ante.

had, at the material time, equal seniority in the post of Postal Officer, 2nd grade; it is, moreover, clear, from a comparison of their qualifications and confidential reports, that the Commission was quite entitled to prefer the former to the latter, especially as this Interested Party knew French and he, thus, possessed an advantage expressly mentioned in the relevant scheme of service.

Regarding, however, the comparison as to seniority between Interested Party Gregoriades and the Appellant, it has transpired, during the hearing before us, that the situation is not exactly such as it was placed before the trial Judge. In actual fact, the Appellant from the 1st August, 1954, until the 31st December, 1955, was a sub-Postmaster, having been previous to that a Mail Officer from the 1st January, 1946, until the 31st July, 1954. On the 1st January, 1956, the until then non-existent post of Postal Officer, 2nd grade, was created, by means of the 1956 Revision of Salaries, and the Appellant was appointed thereto *not by way of promotion*, but by way of abolition of some posts—including that of Sub-Postmaster—and their amalgamation into the new post of Postal Officer, 2nd grade.

On the other hand, Interested Party Gregoriades was a Mail Officer from the 20th June, 1949, until the 30th June, 1956; it is clear that in the post of Mail Officer the Interested Party was junior to the Appellant who was appointed as Mail Officer since the 1st January, 1946. This Interested Party became a Postal Officer, 2nd grade, on the 1st July, 1956 *by way of promotion* from the post of Postal Officer, 3rd grade, which was the post which replaced the post of Mail Officer at the time of the aforesaid Revision of Salaries.

Thus, the Appellant was, in effect, from 1949 to 1954, senior to Interested Party Gregoriades, and from August 1954 he was holding a post equivalent, in substance, to that of Postal Officer, 2nd grade; it follows that the total period of seniority of the Appellant over this Interested Party in the post immediately below that of Postal Officer, 1st grade, was not only six months but just under two years (from the 1st August, 1954 to the 30th June, 1956).

The Respondent Commission has, nevertheless, promoted to the post of Postal Officer, 1st Grade, Interested Party Gregoriades, instead of the Appellant, in spite of the sub-

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stantially greater seniority of the Appellant, and without any really cogent reason for disregarding such seniority.

The most recent, at the time, the 1968 confidential reports on them, which were both signed by the Director of the Department of Posts, Mr. P. Hajioannou, showed them to be about equal in merit. It is to be noted that an observation of Mr. Hadjioannou in the 1967 confidential report on Interested Party Gregoriades, to the effect that he deserved promotion, was not repeated in the 1968 report on the same officer; actually, in 1968 Mr. Hajioannou made, *himself*, a rather poorer general assessment of this Interested Party than the one made in 1967, which was made by another officer; a thing which explains why Mr. Hajioannou did not mention anything about promotion in 1968.

In the circumstances we are of the opinion that it was not reasonably open to the Respondent Commission to promote Interested Party Gregoriades instead of the Appellant. All other things being more or less equal the Appellant's seniority ought to prevail. It follows that the relevant discretionary powers of the Respondent were exercised in an erroneous manner.

While on this point let it be stated that we have, indeed, noted a general statement, in the relevant minutes of the Respondent, that the decisions as to the promotions concerned—including the *sub judice* one—were reached bearing in mind, *inter alia*, the “recommendations” of Mr. Hajioannou (which were made orally at the particular meeting of the Respondent on the 3rd July, 1968); but, in the opinion of the Court, without these recommendations being adequately recorded in the said minutes, so as to enable this Court to examine how and why it was reasonably open to the Respondent to act upon them, notwithstanding the greater seniority of the Appellant and the equally good confidential reports, such a general statement in the minutes of the Respondent, as aforesaid, cannot have the effect of rendering the promotion of Interested Party Gregoriades one which can be treated as having been properly decided upon in the exercise of the particular powers of the Respondent.

In the result this appeal succeeds in so far as the promotion of Interested Party Gregoriades is concerned, which is declared to be *null* and *void* and of no effect whatsoever, and it is

dismissed in so far as it relates to the promotion of Interested Party Christophides.

We are making no order as to costs, in these circumstances.

Appeal allowed in part.

No order as to costs.

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