

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION
CHARALAMBOS GEORGHIADES AND ANOTHER,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

CHARALAMBOS
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(Cases Nos. 277/68, 310/68).

Public Officers—Promotions—Seniority—Striking superiority—Applicant failed to discharge the onus that lay upon him of establishing a striking superiority, on the whole, over anyone of the Interested Parties—Or that his seniority could not have been reasonably overlooked, or that the Respondent Commission otherwise exercised its discretionary powers in a defective manner.

Seniority—Striking superiority—See supra.

Public Officers—Promotions and appointments—Post of Labour Officer, 2nd Grade in the Ministry of Labour and Social Insurance—Public Service Commission holding an examination with a view to selecting the most suitable candidate—A course properly open to the Commission in the circumstances of these case in the discharge of its duties to select the best candidate—The provisions of sections 29(2) and 49(2) of the Public Service Law 1967 (Law No. 33 of 1967) do not deprive the Commission of the right to decide to hold a written examination as a means of evaluating the merits, knowledge and experience of the candidates before it.

Written examination of candidates—Decision of the Respondent Commission to hold such examination as a means of evaluating the merits of the candidates for promotion (or appointment) before it—Proper decision in the circumstances of this case—Not inconsistent with provisions of sections 29(2) and 49(2) of The Public Service Law 1967—See also supra.

Public Officers—Promotions—Confidential Reports and Recommendations by the Head of Department—Promotions to the post of

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Labour Officer, 2nd Grade, in the Ministry of Labour and Social Insurance—Candidates not belonging to one and the same Department under the said Ministry—Director-General of the Ministry concerned properly regarded as Head of Department for the purposes of section 44(3) of the Public Service Law 1967.

Head of Department—For the purposes of section 44(3) of the Public Service Law 1967—See supra.

Public Service Commission—Discretion—Will not be interfered with by the Court even if it might have not chosen the same officers as the Commission—Provided that this discretion has been properly exercised by the Commission, as it has in the instant case.

Ministry of Labour and Social Insurance—Promotions (or appointments) to the post of Labour Officer, 2nd Grade, in that Ministry—Head of Department—Director-General of the Ministry—Section 44(3) of the Public Service Law 1967—See supra, passim.

Cases referred to:

A. Georghiades and The Republic (1967) 3 C.L.R. 653;

Papapetrou and The Republic, 2 R.S.C.C. 115;

Bargilly and The Republic (reported in this Part at p. 33 *ante*);

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

Nedjati and The Republic, 2 R.S.C.C. 78;

Bagdassarian and The Electricity Authority of Cyprus (1968) 3 C.L.R. 736;

Christou and The Republic, 4 R.S.C.C. 1;

Vonditsianos and The Republic (1969) 3 C.L.R. 83; on appeal (1969) 3 C.L.R. 445;

Evangeliou and The Republic (1965) 3 C.L.R. 292;

Partellides and The Republic (1969) 3 C.L.R. 480.

The facts sufficiently appear in the judgment of the Court dismissing the present recourses.

Recourses.

Recourses against the decision of the Respondent to promote the Interested Parties in this recourse to the post of Labour Officer, 2nd Grade in the Ministry of Labour and Social Insurance in preference and instead of the Applicants.

P. Michaelides, for the Applicant in case No. 277/68.

L. Papaphilippou, for the Applicant in case No. 310/68.

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

Cur. adv. vult.

The following judgment was delivered by:

TRIANTAFYLLIDES, J.: These two cases, which have been filed against appointments made, on the 21st May, 1968, by the Respondent Public Service Commission, to the post of Labour Officer, 2nd grade, were heard together in view of their nature.

Actually, they belonged to a group of similar cases, as it appears from the history of these proceedings:—

Originally three such cases—cases 212/68, 218/68 and 277/68—were being heard together. Then, in view of what transpired during the hearing, the Respondent reached a decision, on the 10th September, 1968 (*exhibit 11*), whereby it appointed the Applicant in case 218/68 to the post of Labour Officer, 2nd grade, and as a result he withdrew his recourse. Also, a little later, the Applicant in case 212/68 was promoted to the said post and he withdrew his recourse, too. In the meantime, case 310/68, which had been filed before the hearing of the aforesaid cases had commenced, was joined to be heard together with the still pending case 277/68, and, eventually, judgment was reserved in relation to both of them; this judgment is now to be delivered.

The Applicant in case 277/68—Ch. Georghiadēs—has been at all material times an Assistant Labour Officer and by his recourse he attacks the appointments of eleven other officers to the post of Labour Officer, 2nd grade, viz. M. Pantelides, C. Kyriakides, A. Zambakides, Ph. Papadopoulos, A. Kontos, G. Ioannou; C. Efrem, G. Antoniadēs, N. Stylianou, N. Ioannou and I. Ashiotis.

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The Applicant in case 310/68—O. Savva—has, also, been at all material times an Assistant Labour Officer and by her recourse she attacks the appointments, to the post concerned, of only six of the aforementioned Interested Parties, viz. M. Pantelides, Ph. Papadopoulos, A. Kontos, G. Ioannou, G. Antoniadis and N. Ioannou.

As already stated, the relevant decision of the Respondent Commission was reached on the 21st May, 1968, (see its minutes (*exhibit 1L*); on that date the Commission interviewed some of the candidates, other candidates having been interviewed at previous meetings, on the 25th April, 1968, and the 20th May, 1968 (see its minutes *exhibits 1H and 1K*, respectively). At all such interviews there was present the Director-General of the Ministry affected—the Ministry of Labour and Social Insurance—Mr. M. Sparsis. As it appears from the material before me (see the minutes of the Respondent *exhibits 1I and 1K*) the Commission decided to interview the candidates whom it interviewed “after considering the results of the written examinations which were held on the 29.12.67 and 10.4.68”; amongst them were both Applicants in these cases and the Interested Parties, all of them having been, apparently, found to be *prima facie* entitled to further consideration as a result of the examinations.

The vacancies in the post in question had been advertised on the 6th October, 1967, in the official Gazette, and there were fifty-five candidates who applied for appointment thereto.

On the 22nd December, 1967, the Commission, having heard a statement by Mr. Sparsis to the effect that “the officers to be selected for this post may ultimately be called upon to take charge of district offices and that it was imperative that they should possess a sound knowledge of labour and industrial legislation and of labour and industrial problems” and bearing in mind the judgment in *A. Georghiadis and The Republic*, (1967) 3 C.L.R. 653, decided that “a written examination be held to ascertain the Applicants’”—candidates’—“knowledge.....” (see its minutes *exhibit 1B*).

On the 29th December, 1967, seven of the candidates sat for the written examination set by the Commission and twenty-seven candidates, including the present Applicants and the Interested Parties, refused “to take the examination”; one other candidate could not sit for the examination because of

illness. Eventually, after further consideration of the situation as it had developed, the Commission decided to have another written examination for the purpose and, thus, on the 10th April, 1968, twenty-eight candidates, including the Applicants and the Interested Parties, sat for the examination (see in this respect the minutes of Respondent *exhibits 1C, 1D, 1E and 1F*).

The *sub judice* decision of the Respondent Commission, which, as stated, was reached on the 21st May, 1968, (*exhibit 1L*), reads, in its material parts, as follows:— “The Commission considered also the merits, qualifications and experience of the candidates interviewed on 25.4.68, 20.5.68 and 21.5.68 as well as their performance during the interview (personality, alertness of mind, general knowledge and the correctness of answers to questions put to them, etc.). Bearing in mind the above as well as the recommendations of Mr. Sparsis on each one of them”—who was present at the time—“the Commission decided that the following officers be appointed to the permanent post of Labour Officer, 2nd grade, w.e.f. the date shown opposite their names”; there is then set out a list of the names of the Interested Parties; and the decision of the Commission continues as follows:— “Mr. Sparsis stated that the remaining officers are not mature, they have not proved that they can do the work and need more experience. Generally they are not suitable for the post of Labour Officer, 2nd grade..... The remaining eight vacancies... to remain unfilled”.

The Commission was not bound to appoint, to existing vacancies, candidates who were not yet suitable for the post in question (see *Papapetrou and The Republic*, 2 R.S.C.C. 115); it decided, subsequently, to re-advertise such vacancies (see its minutes *exhibit 1M*); and, eventually, it made further appointments, in relation thereto, on the 3rd January, 1969. These appointments were attacked by the Applicants in the two present cases by means of recourses 46/69 and 111/69, which are in the process of being heard by me (they are fixed for continuation of hearing later on this month). Of course, nothing which is stated in this judgment should be taken as prejudging, in the least, the outcome of cases 46/69 and 111/69; they will be determined on their own merits.

The first issue with which I have to deal in this judgment is the contention that the Commission was wrong in deciding

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to hold written examinations in relation to the filling of the then existing vacancies in the post of Labour Officer, 2nd grade:

It has been submitted in this respect that as there exists no relevant provision in the scheme of service for the said post (see *exhibit 4*) and as no decision to that effect was taken, for the purpose, by the Council of Ministers under section 49(2) of the Public Service Law, 1967 (Law 33/67) and as, moreover, when the Applicants joined the public service there existed no requirement to pass a written examination in order to be appointed to such post, it was not lawfully open to the Commission to decide to ask the candidates to sit for a written examination, as it has done.

More or less the same submission was made in the case of *Bargilly and The Republic*, (reported in this Part at p. 33 *ante*), but it was abandoned during the proceedings in that case. In the judgment in such case I expressed the opinion that the holding of a written examination, in circumstances similar to those of these cases, was a course properly open to the Respondent Commission in the discharge of its duty to select the best candidates; and, having considered this matter once again on the present occasion, I see no reason not to continue adhering to this view.

It is correct that it is expressly provided by section 49(2) of Law 33/67 that “Public officers may be required to pass such examinations or tests (εξετάσεις ή δοκιμασίες) as may be decided by the Council of Ministers or as may be laid down in the relevant schemes of service”; and, also, section 29(2) of this Law provides that “A scheme of service may provide as a prerequisite to appointment or promotion the passing by candidates of an examination (διαγωνισμόν).” But, in my view, special enabling provisions such as these do not deprive the Commission of the right to decide to hold a written examination as a means of evaluating, *inter alia*, the merits, knowledge and experience of candidates before it.

To hold otherwise would result in concluding that it was the intention of the Legislature—and I do think that it was not—to severely handicap, by means of special provisions which are obviously intended to be resorted to in some instances only, the discharge, generally, by the Commission of its paramount duties of selecting, always, for appointment or

promotion the most suitable candidates (see *Theodossiou* and *The Republic*, 2 R.S.C.C. 44) and of protecting, through the proper exercise of its relevant powers, the legitimate interests of public officers (see *Nedjati* and *The Republic*, 2 R.S.C.C. 78). Of course, the *Theodossiou* and *Nedjati* cases (*supra*) were decided in relation to the Public Service Commission established to exercise the powers provided for under Article 125 of the Constitution, and, as it has been held in *Bagdassarian* and *The Electricity Authority of Cyprus* (1968) 3 C.L.R. 736, since the enactment of Law 33/67 such Commission has ceased to exist and the Respondent Public Service Commission is an organ created under, and for the purposes, of Law 33/67, but, I think, that the principles expounded in such cases apply with equal force to the functioning of the Respondent Commission as well.

Apart from the already quoted extracts from the minutes of the Respondent's meeting of the 22nd December, 1967, (*exhibit 1B*), regarding the purpose of the written examinations on the present occasion, it is useful to refer, also, in this respect, to the minutes of the Respondent's meeting of the 2nd January, 1968 (*exhibit 1D*) wherein it is stated that "the Commission considered the question of the examinations set for candidates for the above posts"—those of Labour Officer, 2nd grade, and Assistant Labour Officer—"to test their knowledge having regard to the requirements of the schemes of service. Both the posts in question are First Entry and Promotion Posts and serving and non-serving officers are free to apply. The Commission is of the opinion that in exercising its powers and in its endeavour to select the best officers, it is free to adopt its own method of selection to ascertain the merit and suitability of individual candidates for any post. To do otherwise would mean that in cases of posts involving a knowledge of languages or of technical matters (such as in the case of the posts in question) the Commission would base its decision exclusively on the advice of the Head of the Ministry or Department or on a rough assessment during the interview"; I think that in these minutes the Commission's reasons for holding the examinations are very cogently stated.

As stated earlier in this judgment the Commission based itself on the results of the two written examinations, which were held on the 29th December, 1967, and 10th April, 1968—in relation to the filling of the existing vacancies in the post of Labour Officer, 2nd grade—for the purpose of deciding whom

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of the candidates to interview (see its minutes *exhibit 1I*); and it actually decided expressly not to interview officers who had not fared satisfactorily at the examinations (see its minutes *exhibit 1K*).

It does seem, indeed, that, in the present instance, the Commission relied on the examinations' results mainly in order to decide regarding the list of candidates to be interviewed; and this view is strengthened by the fact that in the reasons given for its *sub judice* decision (*exhibit 1L*) no reference is made by the Commission to the results of the examinations (*exhibit 9*). It may well be, as it is to be derived from the address of counsel for the Respondent Commission, that the Commission did, nevertheless, take, then, into account, such results, together with all other relevant factors, but the omission of the Commission to refer to them expressly in its said decision, shows, in my opinion, that the performance at the examinations of the candidates did not really affect decisively or materially the final selection of those who were appointed. Thus, even if I were to decide that the Commission erred in holding the examinations—and I do not think that it erred—I would still not annul the appointments of the Interested Parties on this ground, because I am satisfied, in the light of all relevant circumstances, that such appointments were based mainly on the considerations expressly set out in the relevant decision of the Respondent Commission.

It is for this reason, too, that I cannot accept the submission, made in the course of these proceedings, that the results of the examinations were binding on the Commission to such an extent that Applicant in case 277/68 had to be promoted, as he, as a matter of fact, was one of the most successful in them. On the basis of all the foregoing it is, I think, quite clear that such examinations were not held by way of a final competition, the outcome of which would determine, in order of priority, the claims to appointment of those who sat for them, but they were resorted to merely as an auxiliary measure towards achieving the aim of the proper evaluation of the candidates concerned.

Another point which has been raised in support of the claim that the *sub judice* appointments should be annulled is that Mr. Sparsis, in his capacity as the Director-General of the Ministry of Labour and Social Insurance, was not the Head of Department who ought to have been summoned to be

present, and to the views of whom due weight should have been given, by the Respondent Commission, when such appointments were made by it.

As a matter of fact section 44(3) of Law 33/67 provides that "In making a promotion, the Commission shall have due regard to the annual confidential reports on the candidates and to recommendations made in this respect by the Head of Department in which the vacancy exists".

A "Head of Department" is defined in section 2 of the same Law as meaning unless the context otherwise requires, "the Officer in charge of a Department and in the case of an Independent Office the Head thereof and includes the Chief Registrar in respect of the Supreme Court, the President of a District Court in respect of such Court, and any other officer who may be designated by the Council of Ministers to be a Head of Department for the purposes of this Law".

On the present occasion the two Applicants and the Interested Parties did not all belong to one and the same particular Department under the Ministry of Labour and Social Insurance. Only three of them, Applicant Savva, in case 310/68, and Interested Parties Zambakides and Ioannou, were members of the staff of the Department of Social Insurance, which became a Department under the said Ministry; instead of being only a Section thereof, as from the 1st January, 1968; the other Applicant, in case 277/68, and the rest of the Interested Parties, were posted either at different District Labour Offices or in Sections of the Ministry in question, none of them being a separate Department.

The Applicants and the Interested Parties, being holders of the post of Assistant Labour Officer (with the exception of Interested Party Ashiotis who appears to have held a post equivalent thereto), were in the grade immediate below that of Labour Officer; 2nd grade; it might, therefore, be said that the existing vacancies, in the first entry and promotion post of Labour Officer, 2nd grade, were filled through promotions; but, in view of the already described manner in which the officers concerned were posted in various services under the Ministry of Labour and Social Insurance, there could not be said to exist the possibility of the Commission having before it, in making such promotions, recommendations by the Head of Department in which the vacancies existed,

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unless Mr. Sparsis, the Director-General of the said Ministry, were to be regarded as a Head of Department, for the purposes of the proper application—in the circumstances of the particular situation—of section 44(3) of Law 33/67 in accordance with the requirements of its true context. I am, thus, of the view that by inviting Mr. Sparsis to be present at its relevant meetings the Commission has acted lawfully; and, also, quite appropriately, because Mr. Sparsis, who had signed all the relevant confidential reports as countersigning officer, was in a position to know, and present, the overall picture (see, too, in this respect the *Bargilly* case, *supra*).

In any case, the Commission had before it, at all material times, the confidential reports on the candidates and in such reports there were to be found, in the form of observations and assessments made by reporting officers, the views expressed by the senior officers under whom the various candidates were working, as well as the views of the Director of the Department of Social Insurance under whom there were working, as stated, three of the candidates.

A factor on which I think there has been placed undue reliance by the Applicants is the fact that, during the proceedings before me, it has transpired that regarding the Applicant in related case 218/68, A. Avraamides—which case was withdrawn on promotion of such Applicant to the post of Labour Officer, 2nd grade—Mr. Sparsis had apparently taken an attitude before the Commission which was contrary to the contents of the confidential reports on him (see in this respect the minutes of the Commission dated the 10th September, 1968, *exhibit* 11).

It is obvious that Mr. Sparsis must have made, due to wrong recollection, a mistake in this respect, when he was expressing his views to the Commission; and I cannot agree that this should lead me to the conclusion that the Commission, in making the *sub judice* appointments, had acted all along on an unsafe basis, because it relied, to a certain extent, on the views of Mr. Sparsis; the fact that Mr. Sparsis made a mistake regarding one candidate does not warrant the conclusion, in the absence of satisfactory proof to that effect, that he expressed before the Commission views which were inconsistent with the relevant confidential reports regarding other candidates.

I shall deal, next, with the question as to whether the Respondent Commission, by appointing the Interested Parties (and I am using in this judgment the term "appointment" in a wide sense so as to include "promotion", and not in a narrow sense as defined in section 28 of Law 33/67) acted in excess or abuse of powers:-

In approaching this issue I have borne in mind all the relevant material which has been placed before me, as well as all the arguments advanced, by learned counsel for the parties in relation thereto.

In perusing the recent confidential reports on each one of the Applicants and the Interested Parties I have not lost sight of the fact that the reporting officers were not the same in respect of all the candidates, whereas the countersigning officer has been the same, viz. Mr. Sparsis, the Director-General of the Ministry concerned.

As the standards of assessment of the merits of candidates, by the reporting officers, could not possibly have been uniform from the subjective point of view, I have not thought that it was completely safe to rely, for purposes of comparison of the candidates from the objective point of view, on the assessments made by different reporting officers, notwithstanding the fact that each one of them had close knowledge of the officer or officers about whom he reported (see *Christou and The Republic*, 4 R.S.C.C. 1). and I have found it more useful to study the observations made by Mr. Sparsis, as countersigning officer, who, even if he did not have as much chance of direct contact with the individual candidates as the reporting officers, he appears, from the nature of his observations, to have tried to evaluate each officer serving under him, in his Ministry, by making up his own mind on the basis of his own relevant knowledge; and I am convinced that he has acted very conscientiously in doing so, because he did not hesitate to record very frankly that in relation to the Applicant in case 310/68 he had had no chance of assessing her work for the purposes of the period from April 1966 to March 1967, and, thus, he did not make any observations of his own about her in the confidential report on her for that period.

With all these in mind, and having weighed together all relevant considerations, I have reached, not without difficulty,

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the conclusion that, even if I, myself, might have not chosen the same officers, as the Commission, for the filling of some of the existing, at the time, vacancies in the post of Labour Officer, 2nd grade, and I might have proceeded to appoint instead of them, or to the remaining vacancies which were left unfilled, either of the Applicants—and particularly the Applicant in case 310/68—I have not been satisfied that in deciding to appoint the Interested Parties and in finding the Applicants to be not yet suitable for appointment, the Respondent Commission has acted in any way in excess or abuse of powers. As stated in the *Chistou* case (*supra*): “The Court has laid down more than once that where a person appointed to a post is duly qualified under the relevant scheme of service this Court will not, on the issue of suitability, substitute its own discretion for that of the Commission provided that the Commission’s discretion has been properly exercised; in other words, the mere fact that the Court, had it been in the position of the Commission, might possibly not have selected for appointment the same candidates as the Commission, is not in itself sufficient ground for the Court to interfere with the decision of the Commission” (and see, too, the case of *Vonditsianos and The Republic* (1969) 3 C.L.R. 83; on appeal (1969) 3 C.L.R. 445).

In relation to the Applicant in case 277/68, it might be observed that, though he did possess most impressive academic qualifications of the highest level, he was, at the material time, quite junior in the service; and the most recent, then, confidential report on him, dated the 11th April, 1968, could possibly lead to the view, when read together with the relevant scheme of service (*exhibit 4*), that this officer (who was described in the report as a person sticking strongly to his views and whose lack of maturity and experience were reflected in wrong initiatives) was not quite ready for appointment to the post of Labour Officer, 2nd grade (which, according to the scheme of service, requires ability to deal tactfully with employers, employees and the public in general and to gain their confidence).

On the other hand, regarding the Applicant in case 310/68, I felt that, had I been the one entrusted, like the Commission, with the administrative duty to select the most suitable candidates, I might, perhaps, have been inclined to select her, who was one of the most senior of the candidates, rather than

prefer, as the Commission has done, an officer such as Interested Party Kontos, who was much junior to her and had not been described in the most recent confidential report on him as anything more than "an average officer gradually growing with experience". Yet, I have not, in the end, found myself to be sufficiently persuaded that, in the light of the proper judicial approach to a matter of this nature, I should, or could, interfere with the *sub judice* decision of the Respondent Commission. It cannot be said that this Applicant has discharged the onus, that lay upon her, of establishing a striking, on the whole, superiority (see *Evangelou and The Republic* (1965) 3 C.L.R. 292) over any one of the Interested Parties, or that her seniority could not have been reasonably overlooked (see *Partellides and The Republic* (1969) 3 C.L.R. 480), or that the Commission has otherwise exercised its discretionary powers in a defective manner, so as to require my intervention under Article 146 of the Constitution.

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In the light of all that has been set out in this judgment these recurses fail and they are dismissed accordingly; but I am, in the circumstances, not making any order as to costs.

Applications dismissed.

No order as to costs.