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

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VAHAK
GEODELEKIAN
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

VAHAK GEODELEKIAN,

Appellant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Revisional Jurisdiction Appeal No. 63).

Public Officers—Promotions—Promotion posts—Posts of Collector (or Inspector) of Customs and Excise in the Customs Department—Schemes of service—On their true construction they do not render eligible for direct promotions to such posts persons not serving in the immediately lower grade—But even if the said schemes correctly construed had that effect, then again they would be inoperative in this respect because they would in that case contravene section 30 (1) (c) of the Public Service Law 1967 (Law No. 33 of 1967).

Public Officers—Promotions—Promotion posts—Promotion of officers not serving in the immediately lower grade and non-promotion of officer so serving—Section 30 (1) (c) of the Public Service Law 1967 contravened—Cf. Section 44(5) of the same Law.

Public Officers—Promotions—Promotion posts—Vacancies exceeding in number the persons serving in the immediately lower grade—Officer serving in such lower grade entitled as of right to be promoted to the aforesaid higher promotion post—Unless he is unsuitable for promotion in accordance with the provisions of section 44 (1) (c) of the Public Service Law 1967—No such finding of unsuitability is possible in law and in fact concerning the Appellant—Situation such that Appellant was virtually entitled to be promoted—All sub judice promotions annulled—Incumbent on Respondents to decide who of the Interested Parties will make room for the Appellant when making his promotion—Which must relate back to the time at which the sub judice promotions were made.

Scheme of service—Interpretation—Scheme of service must not

contravene the relevant statutory provisions—In the present case, section 30 (1) (c) of the Public Service Law 1967—See further supra.

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Promotions—Persons eligible for—As a rule, only officers serving in the immediately lower grade—Unless such officer has been reported upon as unsuitable for promotion—Sections 30 (1) (c) and 44 (1) (c), respectively, of the Public Service Law 1967.

Promotions—How effected, perfected and completed—Section 44(5) of the Public Service Law 1967—In the present case, intermediate promotions of the Interested Parties from the post of Customs and Excise officer, 1st grade to the immediately higher grade of Assistant Collector of Customs and Excise, decided upon by the Respondents, held to have not been completed or perfected in accordance with the provisions of said section 44(5)—But even if they had been so completed or perfected, still the Interested Parties could not have become thereby eligible for the promotions complained of to the higher post of Collector—Otherwise the object of section 30(1)(c) of the Law (supra) would be utterly defeated—Inasmuch as the aforesaid intermediate promotions have been decided upon immediately before, and in contemplation of, the final promotions of the Interested Parties which are being challenged by the recourse in the present case.

Public Service—Promotions—Supra.

This is an appeal by the Applicant from a decision of HadjiAnastassiou J. dismissing his recourse against the Respondents (see *Geodelekian and The Republic* (1969) 3 C.L.R. 428).

The Appellant, a public officer who at the time was serving in the grade of Assistant Collector of Customs and Excise, sought by his recourse under Article 146 of the Constitution to challenge the promotions of the Interested Parties to the immediately higher grade of Collector (or Inspector) of Customs and Excise. It was contended by the Applicant that the Interested Parties were not eligible for such promotion in view of the provisions of section 30 (1) (c) of the Public Service Law, 1967 (Law No. 33 of 1967) under which "promotion offices" shall be filled by the promotion of officers serving in the immediately lower grade or office. Now, the argument went on, the Interested Parties were serving at the material time not, as the Appellant, in the immediately lower grade

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of Assistant Collector (*supra*) but in the still lower grade of Customs and Excise Officer 1st Grade. True, immediately before the promotions complained of, the Respondents decided to promote the Interested Parties to the grade of Assistant Collector in which the Appellant was already serving; but these intermediate promotions of the last moment, it was submitted on behalf of the Appellant, cannot be held as enabling the Respondents to allow the Appellant to be by-passed by the Interested Parties; otherwise the whole object of section 30 (1) (c) *supra* would be defeated.

Allowing the appeal and annulling all the promotions complained of, the Court:~

Held, (1). The relevant schemes of service do not render eligible for direct promotion to the post of Collector of Customs and Excise persons not serving in the immediately lower grade of Assistant Collector of Customs and Excise, but serving in the still lower grade of Customs and Excise Officer, 1st Grade. Indeed, if the said schemes had that effect they would contravene section 30 (1) (c) of the Public Service Law 1967 (*supra*).

(2) We are, also, of the view that when the Interested Parties were promoted by the Respondents to the post of Collector (or Inspector) of Customs and Excise they were not duly holding the immediately lower office of Assistant Collector of Customs and Excise; though their promotions to the latter office had been decided upon by the Respondents (almost immediately before their final promotions to the higher office of Collector), still, they had not yet been “effected”, in the sense that they had not yet been perfected or completed as required under the provisions of section 44(5) of the Public Service Law 1967 (see section 44(5) *post* in the judgment).

(3) It follows that in view of the provisions of section 30 (1) (c) of the Law (*supra*), the Interested Parties were not eligible for the promotions to the post of Collector of Customs and Excise i.e. for the promotions subject-matter of the recourse in the present case.

(4) The result would have been the same, even if the aforesaid intermediate promotions of the Interested Parties, made immediately before their final promotions to the office of Collector as aforesaid, had been duly perfected in accordance with the provisions of said section 44(5) of the Law (*supra*);

Otherwise the whole object of section 30 (1) (c) of the Law (*supra*) would be defeated.

(5) It is clear from the evidence on record that the existing vacancies in the higher grade of Collector required to be filled by promotion exceeded the number of persons holding office as the Appellant in the immediately lower grade of Assistant Collector. Thus, there was no question of the Appellant not being selected for promotion unless, of course, he was found to be unsuitable for such promotion. But in the circumstances of this case such finding was excluded both in law and in fact; in law, due to the provisions of section 44 (1) (c) of the Law, which reads:

“ 44(1) No officer shall be promoted to another office, unless –

(c) he has not been reported upon in the last two annual confidential reports as unsuitable for promotion”; but the Appellant was never so reported; and in fact, in view of the confidential reports concerning the Appellant.

(6) As already stated the position in the present case was such that the Appellant was virtually entitled to be promoted to one of the vacant posts of Collector (or Inspector). It is not for us to decide who out of the Interested Parties ought to have been left out so as to make room for the Appellant; so we have to annul all the promotions in question. It is a matter to be decided by the Respondents after making the promotion of the Appellant, which be it noted, must relate back to the time at which the *sub judice* decision of the Respondents was taken.

Appeal allowed; promotions of Interested Parties annulled. No order as to costs.

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Hadjianastassiou J.) given on the 13th October, 1969 (Revisional Jurisdiction Case Nos. 40/68 and 51/68) dismissing Appellant's recourses against the validity of promotions made by the Respondent to the posts of Inspector of Customs and Collector of Customs and Excise, in the Department of Customs and Excise.

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A. *Triantafyllides*, for the Appellant.

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

C. *Myrianthis*, for the Interested Party Anastassios Philippou.

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

TRIANTAFYLLIDES, J.: The salient facts of this case appear in the elaborate and carefully prepared decision of the learned Judge of this Court who dealt with this case in the first instance (see *Geodelekian and The Republic* (1969) 3 C.L.R. 428); so they need not be repeated in this judgment.

We have decided that this appeal should be allowed and that the promotions of all the Interested Parties should be annulled, for two reasons:—

Firstly, with due respect for the opinion of the trial Judge, we cannot agree with his interpretation of the relevant schemes of service; we take the view, which is shared by learned counsel for both the Appellant and for the Respondent, that such schemes do not render eligible for direct promotion to the promotion post of Collector of Customs and Excise (or to the equivalent promotion post of Inspector in the same Department) persons not serving in the immediately lower grade of Assistant Collector of Customs and Excise, but serving in the still lower grade of Customs and Excise Officer, 1st grade. Indeed, if the schemes had that effect they would contravene section 30(1)(c) of the Public Service Law, 1967 (Law 33/67), which is referred to later on in this judgment.

We are, also, of the opinion that when the Interested Parties were promoted by the Respondent to Collectors or Inspectors they were not duly holding the post of Assistant Collector; though their promotions to Assistant Collectors had been decided upon by the Respondent, they had not yet been “effected”, in the sense that they had not yet been perfected or completed, in accordance with the provisions of section 44(5) of Law 33/67 which read:—

“(5) A promotion shall be effected by a written offer made by the Commission to the officer to be promoted

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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 follows that the Interested Parties were not eligible for promotion to the post of Collector or to the post of Inspector; and it may be pointed out, in this connection, that the trial Judge has expressly stated that he would not himself have upheld the promotions of the Interested Parties had he not found that they were rendered eligible for promotion, from the post of Customs and Excise Officer, 1st grade, to the post of Collector or Inspector, by virtue of the relevant schemes of service.

Secondly, we take the view that section 30(1)(c) of Law 33/67, which reads:—

30(1) — “For the purposes of appointment or promotion

.....

(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”

was contravened by the promotions effected in the circumstances of the present case:

As fairly agreed by counsel for the Respondent, once there is a person serving in the immediately lower grade than the post in which there exists a vacancy, such a person can only be by-passed, and not be promoted, if he is unsuitable for promotion or less suitable than any other person serving in his own grade; and it is not open to the Respondent to decide to promote to this grade (immediately before its decision as to the filling of the promotion post concerned—as it was, indeed, done in the present case) persons serving in a lower post, and then to proceed to compare them, as to suitability, with a person already serving in such grade, with a view to deciding who shall fill the vacancy in the higher post. If that were to be allowed then the whole object of section 30 (1) (c) would be defeated.

The present Appellant was serving in the grade of Assistant Collector, immediately below the grade of Collectors or Inspectors in which the vacancies existed. There were not

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sufficient persons serving in the grade of Assistant Collector so to enable the filling of all the existing vacancies through their promotions; thus, there was no question of the Applicant not being selected for promotion unless he was found to be unsuitable for the purpose.

It is abundantly clear, too, that there was need for the existing vacancies to be filled (see the letter, to that effect, addressed to the Respondent on the 30th November, 1967, by the Ministry under which comes the Department of Customs and Excise).

In the circumstances—and the Respondent not having decided for proper, and duly recorded, reasons to leave any of the vacancies unfilled for the time being—the Appellant was, indeed, entitled to be promoted in order to fill one of the said vacancies, unless, as stated, he was unsuitable for promotion. But there was no finding, on the basis of any cogent reason, by the Respondent to that effect; and, actually, no such finding was reasonably open to the Respondent in the circumstances of the case before us. Because such a finding was excluded both in law and in fact; in law, due to the provisions of section 44(1)(c) which read:—

44(1) – “No officer shall be promoted to another office, unless –

(c) he has not been reported upon in the last two annual confidential reports as unsuitable for promotion;”

and in fact, due to the nature of the confidential reports on the Appellant as they are to be found in the relevant file.

Moreover, in the light of these considerations it was certainly not open to the Respondent to treat the Appellant as being unsuitable, on the basis of a last-minute remark made orally before the Respondent by his Head of Department, Mr. Philippides, and understood to be to this effect by only three out of the five members of the Respondent.

As already stated the situation in the present instance was such that the Appellant was virtually entitled to be promoted to one of the vacant posts of Collector or Inspector. It is not for us to decide who out of the Interested Parties ought to have been left out so as to make room for the promotion of the Appellant, so we have had to annul all the promotions in question. It is up to the Respondent to decide this matter

after making the promotion of the Appellant, which, be it noted, must relate back to the time to which the *sub judice* decision of the Respondent was taken.

In the result the appeal, and recourse, of the Appellant succeed, and the promotions of the Interested Parties are declared to be *null* and *void* and of no effect whatsoever.

As to costs, in the circumstances, we decided to make no order.

Appeal allowed; no order as to costs.

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