

[A. LOIZOU. J.]

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IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

ANTONAKIS
TH. PIERIDES

ANTONAKIS TH. PIERIDES,

v.

THE CYPRUS
BROADCASTING
CORPORATION

Applicant,

and

THE CYPRUS BROADCASTING CORPORATION,

Respondent.

(Case No. 207/71).

Public Service—Scheme of service—Interpretation of schemes of service by the appointing authorities—Principles applicable—The Court will not interfere with the interpretation given by said authorities so long as such interpretation is reasonably open to them.

Schemes of service—Scheme of service attaching to the posts of Technician and Technical Assistant in the Cyprus Broadcasting Corporation—“Three years’ minimum service with the Corporation” construed by the respondent to mean three years’ minimum service in the immediately lower post—Interpretation reasonably open to the respondent—Sustained.

Cyprus Broadcasting Corporation—Schemes of service—Interpretation—See supra.

Paragraph (c) of the relevant scheme of service for Technicians provides :

“(c) Technicians who possess the necessary qualifications for the post of Technical Assistant and who complete a minimum three years’ service with the Corporation will be considered for promotion”.

It was argued by the applicant, *inter alia*, that having completed over three years’ service with the Corporation, and

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notwithstanding that his service in the post of Technician was less than three years, he is still eligible for promotion to the post of Technical Assistant. On the other hand, the respondent Corporation, taking the view that the phrase "three years service with the Corporation" (*supra*) means three years' service in the lower post (viz. the post of Technician), refused to consider him for promotion to the post of Technical Assistant and promoted instead the interested party.

Dismissing the recourse, the Court :

Held, (1) As it was said in the case of *Petsas* and *The Republic*, 3 R.S.C.C. 60, at p. 63 :

"This Court will not give to a scheme of service an interpretation other than that given to it by the Commission (note: the appointing authority) provided that such interpretation was reasonably open to the Commission".

(2) To my mind, since the posts of Technician and Technical Assistant are a combined establishment, the interpretation given to the phrase "three years' minimum service with the Corporation" as meaning three years' minimum service in the immediate lower post was a legitimate one, as it would make no sense to consider it as referring to any service whatsoever in the Corporation.

Recourse dismissed.
No order as to costs.

The facts sufficiently appear in the judgment of the Court dismissing without costs this recourse whereby the applicant challenged the promotion of the interested party to the post of Technical Assistant in the Cyprus Broadcasting Corporation.

Cases referred to :

Christoforos Petsas and *The Republic*, 3 R.S.C.C. 60,
at p. 63.

Recourse.

Recourse for a declaration that the decision and/or omission of the respondent to promote and/or appoint the applicant to the post of Technical Assistant is null and void.

E. Lemonaris, for the applicant.

G. Polyviou, for the respondent.

Cur. adv. vult.

The following judgment was delivered by :-

A. LOIZOU, J. : The applicant by the present recourse asks for a declaration that respondent's decision and/or omission to promote and/or appoint him to the post of Technical Assistant is null and void and of no effect whatsoever.

The applicant was appointed in the service of the respondent Corporation on a completely casual basis, with its Engineering Division, as from 5th August, 1964. His services were terminated on the 10th September, 1964, in order to do his national service, and he resumed work with the respondent Corporation on the 7th January, 1966. The terms of his employment during these periods appear in *exhibits 2, 3 and 4*. He was being paid on a weekly basis and he was not eligible to any privileges or rights to which regular or temporary monthly or other employees were entitled, *i.e.* vacation, sick leave, provident fund, or rent allowance. His employment was renewed every six months and continued on these terms until the 3rd November, 1967, when *exhibit 5* was written, on the contents and effect of which the applicant bases his claim, namely that as from that date he was appointed to the post of Technician and, therefore, having completed three years in that post, he was entitled to promotion to the post of Technical Assistant, as these two grades form a combined establishment.

The applicant some time before November 1967 applied to the respondent Corporation for appointment to the

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post of Technician. The respondents replied by *exhibit 5* saying that they could not offer him permanent appointment to the post of Technician on account of the fact that he did not possess the qualifications required by the Schemes of Service, but, in their desire to afford to him the opportunity to acquire those qualifications, the Management of the respondent Corporation decided to allow him to remain in their service on a temporary basis for a period of two years, during which he was told that he should at least pass the examination of the first year of City and Guilds of London Institute, when he would be appointed permanently to the post of Technician. He was also given the basic salary of the post of Technician.

The contention of the applicant is that he was by *exhibit 5* appointed to the post of Technician on a temporary basis. On the other hand, it was argued on behalf of the respondent Corporation that since the applicant did not possess on the 3rd November, 1967, the qualifications required by the Schemes of Service, *exhibit 7*, for appointment to the post of Technician he could not have been appointed, even on a temporary basis, to that post on that date as the same qualifications would have been required.

On the 6th November, 1969, as it appears from the relevant minute of the respondent, (*exhibit 12*), it was decided to assign to the applicant the duties of Technician "in view of the fact that he had served in the Corporation on a temporary basis as from 1964 and that he was retained in the service as from November, 1967, with special terms, (letter of the Management 3.11.67), in spite of the fact that he did not possess the qualifications required by the Schemes of Service. He passed the examinations of the first year, City and Guilds, except one subject, but he passed the corresponding subject of the second year of the City and Guilds. The assignment of duties of a Technician to the applicant will be done within the framework of the Schemes of Service for the post of Technician as from the 1st November, 1969".

On the 11th November, 1969, *exhibit 6* was sent to the applicant, communicating to him the decision of the

Corporation to assign to him the duties of a Technician in the Technical Services Department.

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The applicant on the 9th September, 1970, wrote to the General Manager of the respondent (*exhibit 8*) by which he asked that his promotion to the post of Technical Assistant be examined, in as much as he had acquired the qualifications required by the Schemes of Service and he had been in the post of Technician as from the 1st January, 1966. To that letter a reply was sent dated 19th September, 1970, (*exhibit 9*), whereby he was informed that the date of his appointment to the post of Technician was the 1st November, 1969, and, therefore, he did not satisfy the time limit imposed by the Schemes of Service. This letter was written by the Assistant General Manager of the respondent corporation.

On the 5th April, 1971, the applicant, through his advocate, wrote to the General Manager, (*exhibit 10*), putting forward the same allegations that have been advanced in this recourse and claiming that the case should be placed before the Council of the respondent Corporation for approval of the applicant's promotion. On the 27th April, 1971, the Assistant General Manager replied to applicant's advocate (*exhibit 11*), informing him that the applicant had already been informed that he did not satisfy the terms of the Schemes of Service for promotion to the post of Technical Assistant, but that in view of a request from the Trade Union the whole matter was placed before the Council of the respondent, was considered by it on the 26th March and decided that there was no question of applicant's promotion at that stage. The minutes of the Council (*exhibit 3*) read as follows:

"The Corporation adopted the decision of the General Manager on the application of Antonakis Pierides and the request of CITIRIK (the trade union) for promotion."

One of the legal points raised in the opposition is that the recourse is out of time. This poses the question whether the letter of the Deputy Director-General of the respondent Corporation, dated 19th September, 1970,

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(*exhibit 9*), whereby the applicant was informed that his request for promotion to the post of Technical Assistant could not be acceded to, since he did not possess the required qualifications under the Schemes of Service, was the communication of an executory decision taken by a competent organ. It was argued that on the presumption of regularity it should be considered, that the Deputy Director-General should be deemed to have acted after due consideration of the case. With respect I disagree with learned counsel's argument on this point as *inter alia* questions of promotion were, by virtue of the provisions of the Public Corporations (Regulation of Personnel Matters) Law, 61/1970, within the competency of the Corporation itself, and it appears that the matter was considered by the Council of the Corporation for the first time on the 26th March, 1971, (*exhibit 13*) and communicated to the applicant by their letter of the 27th April, 1971, (*exhibit 11*). In the circumstances I have come to the conclusion that this recourse is not out of time, the 75 days period provided by Article 146.3 of the Constitution started running from that date, when a final decision was taken by the competent organ of the respondents.

Regarding the nature of the duties of the applicant during the period between 3rd November, 1967, and the 11th November, 1969, both sides were content by the following statement made by the respondent's Chief Engineer :

"During the period 3.11.67 to 11.11.69 Mr. Pierides was allocated duties of Assistant to the Technical Superintendent (Shift). The position of Assistant to the Technical Superintendent (Shift) is normally occupied by a Technician."

Relevant to the points under consideration are the following notes appearing in the Schemes of Service for Technicians, (*exhibit 7*) :-

"(a) Persons appointed to the post of Technician will be required to pass within two years the first year examinations of the City and Guilds Telecommunication Technician course.

(b) The grades of Technician and Technical Assistant form a combined establishment.

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(c) Technicians who possess the necessary qualifications for the post of Technical Assistant and who complete a minimum of three years service with the Corporation will be considered for promotion."

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Paragraph (c) above, appears also, verbatim, as a note to the Schemes of Service of Technical Assistants, and it has considerable significance and bearing in the present case, as the argument of learned counsel for the applicant was not merely confined to the one already explained, *i.e.* that applicant had been acting in the capacity of a Technician for three years, but that, in the alternative, the true construction of paragraph (c) hereof is that the minimum of three years service with the Corporation, referred to therein, refers to any service in the Corporation and not to a minimum of the years service with the Corporation in the post of Technician.

So far as the first point is concerned, a consideration of all the facts and circumstances of the present case, including a perusal of the documents produced, most of which have already been referred to in the judgment, shows that he was not considered as a Technician or as having been appointed or assigned duties as such, even in a temporary capacity until the 6th November, 1969. It should be pointed out that when the letter of the 3rd November, 1967, (*exhibit 5*) was written, reference was made therein that the Management "decided to allow him to remain in the service", which should be considered as the general service on the casual basis in which he was until then engaged, and not that he was being engaged for any particular post. I have no doubt that the first time that he was appointed to the post of Technician was the 6th November, 1969, by virtue of the decision of the respondent (*exhibit 12*). The fact that by that appointment he was given two increments does not alter, to my mind, the position.

I turn now to the second point regarding the interpretation to be given to the requirement of three years

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service with the Corporation, appearing in paragraph (c) of *exhibit 7*, hereinabove referred to. As it was said in the case of *Christoforos Petsas and The Republic*, 3 R.S.C.C. p. 60 at p. 63 :-

“This Court will not give to a scheme of service an interpretation other than that given to it by the Commission, provided that such interpretation was reasonably open to the Commission.”

To my mind, since the posts of Technician and Technical Assistant are a combined establishment, the interpretation given to the “three years minimum service with the Corporation” as meaning three years minimum service in the immediate lower post was a legitimate one, as it would make no sense to consider it as referring to any service whatsoever in the Corporation. In order that a Technician should be promoted to the higher post of Technical Assistant it is only reasonable to assume that he should be required to serve for three years in the immediately lower post. In the circumstances, I find that it was reasonably open to the respondents to interpret the Schemes of Service as they did and, therefore, this Court cannot interfere with such interpretation.

For all the above reasons the application is dismissed, but I make no order as to costs.

*Application dismissed;
no order as to costs.*