

[TRIANTAFYLLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

CHRYSOSTOMOS ANDREOU,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION AND ANOTHER,

*Respondents.*

(Case No. 103/72).

1973  
Feb 27

CHRYSOSTOMOS  
ANDREOU

v

REPUBLIC  
(PUBLIC  
SERVICE  
COMMISSION)

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*Public Service Commission—Exercise of powers—Include not only the safeguarding of the efficiency and proper functioning of the public service, but also the protection of the legitimate interests of the individual holders of public offices. (See Nedjati and The Republic, 2 R.S.C.C. 78)—Decision not to fill a vacancy reached without full knowledge of all the material facts—Is, therefore, the product of a defective exercise of its (the Commission's) relevant discretionary powers—Annulled.*

*Vacancy—Filling a vacancy—Decision not to fill a vacancy reached by the respondent Commission without knowledge of all the material facts—Decision annulled—See further supra.*

*Discretionary powers—Defective exercise of—Reaching a decision without full knowledge of the relevant facts—Decision must be annulled—See further supra.*

*Words and Phrases—“Appropriate authority” in section 2 of the Public Service Law, 1967 (Law No. 33 of 1967).*

In this case the applicant complains against a decision taken, on January 13, 1972, by the respondent Public Service Commission, *inter alia*, not to fill on the said date an existing at the time vacancy in the post of Statistics Officer, Ministry of Finance. Annuling the said decision, the learned President of the Supreme Court :-

Held, (1). As held in the case *Nedjati and The Republic*, 2 R.S.C.C. 78, at p. 82, the objects of the exercise

1973  
Feb. 27

CHRYSOSTOMOS  
ANDREOU

v.

REPUBLIC  
(PUBLIC  
SERVICE  
COMMISSION)

of the powers of the Public Service Commission "include not only the safeguarding of the efficiency and proper functioning of the public service of the Republic, but also the protection of the legitimate interests of the individual holders of public offices."

- (2) It was, therefore, all the more essential for the Commission to know the full story concerning the suggestion by the Minister that the second vacancy should not be filled; and as the Commission decided not to fill such vacancy without knowledge of the full facts, its decision to that effect is the product of a defective exercise of its relevant powers and it has to be annulled. This matter has, therefore, to be reconsidered by the Commission in the light of all the relevant factors.

*Order accordingly.*

Cases referred to :

*Nedjati and The Republic*, 2 R.S.C.C. 78, at p. 82;

*Papapetrou and The Republic (No. 2)*, 2 R.S.C.C. 115.

**Recourse.**

Recourse against the decision of the respondent Public Service Commission, dated the 13th January, 1972 whereby it appointed the interested party to the post of Statistics Officer and against the failure of the respondent Commission to fill on the said date an existing, at the time, vacancy in the post in question.

*K. Talarides*, for the applicant.

*N. Charalambous*, Counsel of the Republic,  
for the respondents.

*Cur. adv. vult.*

The following decision was delivered by :-

TRIANAFYLLIDES, P.: In this case the applicant complains against a decision taken by the respondent Public Service Commission, on the 13th January, 1972, by means of which there was appointed to the "first entry and promotion" post of Statistics Officer, in the Department of Statistics and Research, the interested party, Lefkios Pericleous; the applicant complains, also, about the failure

of the Commission to fill, on the said date, an existing, at the time, vacancy in the post in question.

1973  
Feb. 27

CHRYSOSTOMOS  
ANDREOU

v.

REPUBLIC  
(PUBLIC  
SERVICE  
COMMISSION)

The filling of two vacancies in the post of Statistics Officer was requested in writing, as envisaged under section 17 of the Public Service Law, 1967 (Law 33/67), by the respondent Director-General of the Ministry of Finance, by means of a letter dated 13th October, 1971 (copy of which is attached to the Opposition). It is stated in this letter that the Minister of Finance had approved, in accordance with the provisions of a relevant circular of the Council of Ministers, the filling of these two vacancies; and inasmuch as the Department concerned comes under the Ministry of Finance the Director-General of such Ministry may be regarded, for the purposes of Law 33/67, as the "appropriate authority" in the sense of sections 2 and 17 of such Law.

On the 13th January, 1972, the respondent Commission met and interviewed three out of five candidates; two of those interviewed were the applicant and the interested party; the relevant minutes read as follows :

"1. *Filling of vacancies in the post of Statistics Officer, in the Department of Statistics & Research.*

2 vacancies (permanent).

Mr. Ch. Menelaou, Director of the Department of Statistics & Research, present.

The Director of the Department of Statistics & Research stated that he had discussed with the Minister of Finance the question of the filling of the vacancies in the above post and it was agreed that only one vacancy should be filled for the time being. The Director of the Department added that the person to be appointed should have training in Vital, Health and Demographic Statistics.

The Commission interviewed the following candidates :

1. Andreou Chrysostomos.
2. Pericleous Lefkios.
3. Tryphon Andreas Theophanous.

1973  
Feb 27  
—

CHRYSOSTOMOS  
ANDREOU

v.

REPUBLIC  
(PUBLIC  
SERVICE  
COMMISSION)

The Commission as well as the Director of the Department of Statistics & Research put several questions to all the candidates on matters of general knowledge and on matters connected with the duties of the post as shown in the relevant scheme of service.

The Commission considered the merits, qualifications and experience of the candidates interviewed as well as their performance during the interview (personality, alertness of mind, general intelligence and the correctness of answers to questions put to them, etc.). The Personal Files and the Annual Confidential Reports of the officers already in the service were also taken into consideration.

The Director of the Department of Statistics & Research stated that Mr. Lefkios Pericleous, one of the candidates, possesses a Degree in Mathematics which he obtained from the University of Athens in 1964. In September, 1970, he was awarded a nine-months' fellowship by the World Health Organization for a post-graduate specialization in Vital, Health and Demographic Statistics. He completed his course and he is working in the Department of Statistics & Research since September 1971. He is now preparing a Report for the improvement of our Demographic Statistics. He is the most suitable candidate and recommended him for appointment to the above post.

Bearing in mind all the above, the Commission decided unanimously that Mr. Lefkios Pericleous was on the whole the best and that he be appointed on probation to the permanent post of Statistics Officer w.e.f. 1.2.72.

The Commission further decided that the remaining vacancy be left unfilled for the time being."

It emerges quite clearly from the above minutes that the Commission met for the purpose of filling both vacancies, but in the end it decided to fill only one.

I would not disagree with the proposition (see, *inter alia*, *Papapetrou v. The Republic (No. 2)*, 2 R.S.C.C. 115) that, if a suitable candidate is not found, the Commission

is not bound to fill a vacancy merely because it has been requested or authorized to do so or because it has advertised the existence of such vacancy or because there exists a *qualified* candidate.

From the minutes of the Commission, which have already been referred to in this Decision, it is clear that the reason for which the Commission did not fill one of the two existing vacancies was not that no suitable candidate had been found: It is expressly stated in such minutes that Mr. Ch. Menelaou, the Head of the Department concerned, stated at the meeting of the Commission on the 13th January, 1972, that he had discussed with the Minister of Finance the question of the filling of the vacancies in the post concerned and that "it was agreed that only one vacancy should be filled for the time being".

On the above date the Commission had before it an application for appointment (see *exhibit* 4), made by the applicant, who was at the time a Senior Statistics Assistant in the Department concerned; his application had been forwarded to the Commission by the Head of the Department, who wrote thereon the following:- "Mr. Andreou although of average intelligence and academic background, both at secondary school level and university level, makes strenuous efforts to succeed in his professional sphere. He has proved himself of immense value to the Ministry of Education working on Educational Statistics, providing essential statistical information for major administrative decisions particularly in the recent decision by Government to extend free education till the age of 15. He is polite to his superiors and friendly with his colleagues and expects to be appreciated in his efforts and endeavours."

In the light of the above it is quite clear that the applicant was not described by his Head of Department, Mr. Menelaou, as being unsuitable for appointment; on the contrary he was favourably commented on.

As it appears from the Commission's minutes the interested party was, eventually, selected by it for appointment as being "on the whole the best", after he had been recommended by his Head of Department as "the most suitable candidate". The Commission "further decided that the remaining vacancy be left unfilled for the time being".

1973  
Feb. 27

CHRYSOStOMOS  
ANDREOU

v.

REPUBLIC  
(PUBLIC  
SERVICE  
COMMISSION)

1973  
Feb. 27

CHRYSOStOMOS  
ANDREOU

v.

REPUBLIC  
(PUBLIC  
SERVICE  
COMMISSION)

In the absence of any statement to the effect that neither the applicant nor the other candidate were found to be suitable for appointment, and as no other reason has been recorded in the Commission's minutes for its decision not to fill the other vacancy, the only reasonable conclusion that can be reached, in the circumstances, is that the Commission decided to leave the other vacancy unfilled because it was informed, as stated at the beginning of its minutes, that Mr. Menelaou had agreed with the Minister of Finance that only one vacancy was to be filled for the time being.

I am not inclined to hold that it was possible, at that late stage of the relevant administrative process, for the Minister of Finance to step in and prevent the filling of the other vacancy; but, in any event, I think that a request for the non-filling of such vacancy should have been formally made in writing, in the same manner as the request for the filling of the vacancies had been made, under section 17 of Law 33/67; moreover, the "appropriate authority" which could have addressed to the Commission the communication about the non-filling of one out of the two vacant posts was the Minister of Finance acting either directly or through the Director-General of his Ministry, and not merely through the Director of the Department concerned; it is to be noted in this connection that the relevant part of the definition of "appropriate authority" in section 2 of Law 33/67 states that such authority "in respect of his Ministry and any Department under his Ministry" is the "Minister usually acting through the Director-General of his Ministry"; and, as already mentioned in the present case, the request for the filling of both vacancies had been addressed to the Commission, in writing, by the Director-General of the Ministry of Finance.

We are not really concerned, in the present case, with the validity of any decision of the "appropriate authority" that the second vacancy should not be filled; what has happened is that the respondent Public Service Commission decided not to fill such vacancy on the strength of a statement made, as aforementioned, by Mr. Menelaou.

Mr. Menelaou has stated in his evidence that prior to the meeting of the respondent Commission on the 13th

January, 1972, he had formed the view that neither the applicant nor the other candidate, Tr. Theophanous, who had been, also, invited for an interview by the Commission were, at the time, suitable for appointment to the post of Statistics Officer. Mr. Menelaou went on to testify that, as a result of forming such a view, he saw the Minister of Finance and they discussed the possibility of filling only one of the existing vacancies in the post of Statistics Officer. Having considered the evidence of Mr. Menelaou as a whole, together with all other relevant material before me, including the evidence of the applicant, I have no doubt that the primary reason which made Mr. Menelaou come to the conclusion that the applicant was not suitable to fill one of the two vacancies was the fact that the applicant had decided, contrary to the advice of Mr. Menelaou, to accept a scholarship abroad which, in the opinion of Mr. Menelaou, was not going to render the applicant more useful to his Department.

Mr. Menelaou testified that he never mentioned at all to the Commission his disagreement with the applicant regarding the matter of this scholarship. Had he done so it would have been up to the Commission to decide whether or not the acceptance by the applicant of the scholarship rendered him a person no longer suitable for appointment to the post concerned, and it might or might not have decided, on this ground, to leave the second vacancy in such post unfilled.

As a result of the omission of Mr. Menelaou to lay all relevant facts before the Commission (because, apparently, he thought that the matter of the scholarship was an internal matter of his Department) the decision of the Commission not to fill the second vacancy was reached without knowledge of the reason which had made Mr. Menelaou seek and secure the agreement of the Minister of Finance that such vacancy was not to be filled for the time being :

As held in *Nedjati v. The Republic*, 2 R.S.C.C. 78, 82, the objects of the exercise of the powers of the Public Service Commission "include, not only the safeguarding of the efficiency and proper functioning of the public service of the Republic, but also the protection of the

1973  
Feb. 27  
—

CHRYSOSTOMOS  
ANDREOU

v.

REPUBLIC  
(PUBLIC  
SERVICE  
COMMISSION)

1973  
Feb. 27

CHRYSTOSTOMOS  
ANDREOU

v.

REPUBLIC  
(PUBLIC  
SERVICE  
COMMISSION)

legitimate interests of the individual holders of public officer". It was, therefore, all the more essential for the Commission to know the full story concerning the suggestion that the second vacancy should not be filled; and as the Commission decided not to fill such vacancy without knowledge of all material facts its decision to that effect is the product of a defective exercise of its relevant powers and it has to be annulled.

For the foregoing reasons this recourse succeeds in so far as is concerned the complaint of the applicant that the Commission decided not to fill the second existing vacancy in the post in question; this matter had to be reconsidered by the Commission in the light of all relevant factors.

Regarding the complaint of the applicant against the appointment of the interested party the judgment is reserved to be delivered later.

*Order accordingly.*