

1973  
June 19  
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PETRAKIS  
PANAYIDES

v.

REPUBLIC  
(PUBLIC  
SERVICE  
COMMISSION)

[TRIANTAFYLIDIS, P., STAVRINIDES, L. LOIZOU,  
HADJIANASTASSIOU, MALACHTOS, JJ.]

PETRAKIS PANAYIDES,

*Appellant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Revisional Jurisdiction Appeal No. 107).

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*Promotion—Revocation—Promotion not perfected by offer and acceptance in the sense of section 44(5) of the Public Service Law, 1967 (Law 33/67)—Original offer withdrawn and new offer of promotion made with effect from a different date—Such administrative process not amounting to a revocation of the original decision to select the interested party for promotion—Consequently, the appellant who is a public officer not eligible for promotion (because of lack of the requisite qualifications) at the time the original decision to select for promotion the interested party was taken, does not possess the “legitimate interest” in the sense of Article 146.2 of the Constitution, notwithstanding that he became so qualified subsequently at the time when the new offer was made to the interested party as aforesaid—But he possesses such interest to challenge that part of the said decision which relates to retrospectivity—See further infra.*

*Administrative decisions—Retrospectivity—The rule against—An administrative decision and, particularly, a promotion in the public service cannot be given retrospective effect, unless there is a statutory provision enabling this to be done—Retrospective promotion in the instant case authorised, by implication, by means of the Supplementary Budget Law (No. 9) 1970 (Law No. 34 of 1970)—No matter whether or not such Budget expired on December 31, 1970 i.e. about two and a half months prior to the decision to promote the interested party with retrospective effect as from January 1, 1970.*

*Recourse under Article 146 of the Constitution—“Legitimate interest” required—Article 146.2 of the Constitution—  
Recourse against promotions in the public service—  
Applicant (appellant) not qualified for promotion under  
the schemes of service—Not entitled to challenge by  
recourse the promotion (of the interested party) be-  
cause he lacked the “legitimate” interest in the sense  
of Article 146.2 of the Constitution—See further im-  
mediately herebelow.*

1973  
June 19  
—  
PETRAKIS  
PANAYIDES  
v.  
REPUBLIC  
(PUBLIC  
SERVICE  
COMMISSION)

*“Legitimate interest”—Article 146.2 of the Constitution—  
Public Officers—Extent of interest required in order to  
vest in a public officer a personal legitimate interest  
enabling him to make a recourse against promotions of  
colleagues of his—Such legitimate interest involved if  
an officer is adversely affected from the point of view  
of seniority—Decision giving promotion retrospective effect  
vests applicant (now appellant) with such legitimate  
interest because such retrospectivity could affect his  
seniority after his own promotion to the post concerned  
—See further immediately hereabove.*

*Promotions—See supra, passim.*

*Retrospectivity of administrative decisions—The rule against  
—Exceptions—See supra, passim.*

*“Legitimate interest” in the sense of Article 146.2 of the  
Constitution—See supra, passim.*

This is an appeal against the judgment of a Judge of the Supreme Court dismissing the appellant’s recourse against the promotion of another public officer—the interested party (see (1972) 3 C.L.R. 467).

The promotion of the interested party was decided by the Public Service Commission on December 16, 1970, but it was not perfected then by offer and acceptance, in the sense of section 44(5) of the Public Service Law, 1967 (Law 33/67), because there was raised the question of giving retrospective effect to such promotion, in view of the effective date of the re-organisation of the Department by Law No. 34 of 1970; eventually, the Commission decided on March 21, 1971 to make the promotion retrospective with effect as from January 1, 1970, instead of January 1, 1971 as has been originally decided; as a result the offer of promotion first made with effect from January 1, 1971, was with-

1973  
June 19

PETRAKIS  
PANAYIDES

v.

REPUBLIC  
(PUBLIC  
SERVICE  
COMMISSION)

drawn and a new offer of promotion was made with effect from January 1, 1970 (*supra*).

It is not disputed that at the time when the selection for promotion of the interested party was made (*i.e.* December 16, 1970), the appellant was not eligible to be considered for promotion, not being then qualified for the purpose; consequently, he was not entitled to challenge by recourse the decision to promote the interested party as he lacked at the material time the "legitimate interest" within Article 146 of the Constitution.

It was argued by counsel for the appellant that, in the circumstances of this case, there did, or could, arise on March 26, 1971 (*supra*) the possibility or necessity of making a new selection for promotion from amongst candidates eligible *then* for promotion, one of whom was by that time undisputedly the appellant. It was further argued by counsel for the appellant that, in any event, the appellant has a legitimate interest at least to challenge that part of the decision complained of which gives retrospective effect to the promotion of the interested party; and that such part is contrary to the principles of administrative law excluding, as a general rule, the retrospectivity of the administrative decisions.

Dismissing the appeal. the Supreme Court :-

Held, (1). The administrative process described, hereabove did not amount to a revocation of the decision dated December 16, 1970, (*supra*) to promote the interested party as being the most suitable candidate, but it related only to the matter of the date from which there would take effect his already decided on December 16, 1970, promotion.

(2) This being so, it cannot be said that on March 26, 1971, the possibility or the necessity arose to make a new selection for promotion from amongst candidates eligible *then* for promotion, one of whom was by that time the appellant, who had become so eligible having passed, in the meantime the prescribed examination in relation to the General Orders.

(3) In the light of the decision of the Greek Council of State No. 570/1970, there being a possibility of a legitimate interest being involved if an officer is affected adversely from the point of seniority, we are of the opinion that the appellant had a legitimate interest so as to entitle him, under Article 146 of the Constitution, to challenge the decision of March 26, 1971 (*supra*), by means of which retrospective effect was given to the promotion of the interested party, because such retrospectivity could adversely affect the appellant's seniority after his own promotion to the post of Port Officer, 1st Grade.

(4)(a) It is a principle of administrative law that, in the absence of an express legislative provision, an administrative decision and, particularly, one effecting promotion in the public service, cannot be given retrospective effect.

(b) But in the instant case there is such provision: it is Law No. 34 of 1970 which created in May 1970 the post in question and made provision for the payment of the salary of such post as from January 1, 1970. In our view the said Law authorised, by necessary implication, the respondent Public Service Commission to make the promotion in question with retrospective effect.

(c) The mere fact that Law 34/1970 (*i.e.* the Budget for 1970) had ceased to be operative for budgetary purposes on December 31, 1970, did not prevent the Commission from reaching in March 1971 (*supra*) its decision as to the retrospectivity of the promotion in question.

*Appeal dismissed.*  
*No order as to costs.*

Cases referred to :

*Neophytou v. The Republic*, 1964 C.L.R. 280, at p. 293;

*Constantinou v. The Republic* (1966) 3 C.L.R. 862, at p. 866;

1973  
June 19

—  
PETRAKIS  
PANAYIDES

v.

REPUBLIC  
(PUBLIC  
SERVICE  
COMMISSION)

*Miltiadou v. The Republic* (1969) 3 C.L.R. 210;

*Decisions of the Greek Council of State Nos. 71/1968,  
2314/1970, 570/1970, 422/1958, 946/1969.*

**Appeal.**

Appeal against the judgment of a judge of the Supreme Court of Cyprus (A. Loizou, J.) given on the 2nd September, 1972 (Revisional Jurisdiction Case No. 198/71) whereby applicant's recourse against the promotion of the interested party and against the retrospective effect of such promotion was dismissed.

*L. Papaphilippou*, for the appellant.

*S. Georghiades*, Senior Counsel of the Republic,  
for the respondent.

*Cur. adv. vult.*

The judgment of the Court was delivered by :-

TRIANTAFYLIDIS, P. : In this Case the appellant appeals against the decision\* of a judge of this Court, at first instance, by virtue of which there was dismissed his recourse against the promotion of another public officer—"the interested party"—and against the retrospective effect of such promotion.

The appellant was, at the material time, a Port Officer, 2nd Grade, and the interested party was promoted to the post of Port Officer, 1st Grade: such post having come into existence, with its present status, as a result of the re-organization of the Department concerned, by means of the Supplementary Budget Law (No. 9), 1970 (Law 34/70), which was enacted in May, 1970.

The meeting of the respondent Public Service Commission, at which the selection for promotion of the interested party was made, took place on the 16th December, 1970, and at that time, the appellant, admittedly, was not eligible to be considered for promotion, not being qualified for the purpose. Consequently he was not entitled to challenge by recourse the decision to promote the interested party, because, in

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\* Reported in (1972) 3 C.L.R. 467.

view of his not being qualified, he lacked, at the material time, legitimate interest, in the sense of Article 146 of the Constitution (see, *inter alia*, in this respect, *Neophytou v. The Republic*, 1964 C.L.R. 280, 293; *Consiantinou v. The Republic* (1966) 3 C.L.R. 862, 866, *Miltiadou v. The Republic* (1969) 3 C.L.R. 210 and the Decisions Nos. 71/1968 and 2314/70 of the Council of State in Greece); thus, in so far as this appeal relates to the failure of his recourse against the promotion of the interested party, it is dismissed.

The promotion of the interested party, as decided on the 16th December, 1970, was not perfected then, by offer and acceptance, in the sense of section 44(5) of The Public Service Law, 1967 (Law 33/67), because there was raised the question of giving retrospective effect to such promotion, in view of the effective date of the re-organization of the Department by means of the said Law 34/70; eventually, the Commission decided, on the 26th March, 1971, to make the promotion retrospective from the 1st January, 1970, instead of from the 1st January, 1971, as had been originally decided, and, as a result, the offer of promotion first made to the interested party, with effect from the 1st January, 1971, was withdrawn and a new offer of promotion was made with effect from the 1st January, 1970.

In our view, the afore-described administrative process did not amount to a revocation of the decision to promote the interested party as being the most suitable candidate, but it related only to the matter of the date from which there would take effect his already decided, on the 16th December, 1970, promotion. This being so we cannot agree, with counsel for the appellant, that there did, or could, arise on the 26th March, 1971, the possibility or necessity of making a new selection for promotion from amongst candidates eligible *then* for promotion, one of whom was by that time the appellant, who had become eligible to be considered for promotion having passed, in the meantime, the prescribed examination in relation to the General Orders.

There remains the question whether the appellant could challenge the decision to give retrospective effect to the promotion of the interested party: It could be

1973  
June 19

PETRAKIS  
PANAYIDES

v.

REPUBLIC  
(PUBLIC  
SERVICE  
COMMISSION)

1973  
June 19

PETRAKIS  
PANAYIDES

v.

REPUBLIC  
(PUBLIC  
SERVICE  
COMMISSION)

said that he was entitled to do so, in view, especially, of what was stated by Stassinopoulos on the Law of Administrative Disputes, (1964) p. 200, to the effect that a legitimate interest of a public officer is involved in the proper application of provisions relating to the branch of the public service to which he belongs; but in a later decision of the Council of State in Greece, No. 570/1970, there appears to have been stressed that *merely* a general interest of a public officer in connection with compliance with provisions applicable to the branch of the public service to which he belongs does not suffice to vest in him a personal legitimate interest enabling him to make a recourse against promotions of colleagues of his. As, however, the appellant is a Port Officer, 2nd Grade, and as in the above decision of the Council of State in Greece there has been made express reference to the possibility of a legitimate interest being involved if an officer is affected adversely from the point of view of seniority, we are of the opinion that the appellant had a legitimate interest so as to entitle him, under Article 146 of the Constitution, to challenge the decision of the 26th March, 1971, by means of which retrospective effect was given to the promotion of the interested party, because such retrospectivity could adversely affect the appellant's seniority after his own promotion to the post of Port Officer, 1st Grade.

It is a principle of Administrative Law, which has been affirmed by the judgment appealed from in this case, and which has been reiterated time and time again in decisions of this Court and decisions of the Council of State in Greece (such as, for example, No. 422/1958), that an administrative decision and, particularly, one effecting a promotion, cannot be given retrospective effect, unless there exists statutory provision enabling this to be done (see, further, the decision No. 946/1969 of the Council of State in Greece).

The question which arises for examination, in this respect, is whether there existed legislative authorization for the retrospectivity of the promotion of the interested party. In our view, Law 34/70, by means of which there was created, in May, 1970, the post in question and provision was made for the payment of the salary of such post as from the 1st January, 1970, authorized,

by implication, the respondent Commission to make the promotion retrospective (and see further in this connection, *Revue du Droit Public et de la Science Politique*, 1953, p. 45).

The mere fact that Law 34/70 had ceased to be operative for budgetary purposes on the 31st December, 1970, did not prevent the Commission from validly reaching its decision, as to the retrospectivity of the promotion, in March, 1971; the legal authorization to fill the post in question as from the 1st January, 1970, did not lapse on the 31st December, 1970, and the purely budgetary consequences of the Commission's decision, as regards 1971, could be met by the making of the requisite financial provision in respect of 1971, in the same way as this would have to be done for ensuing years.

For all the above reasons this appeal fails and is dismissed; we are not, however, prepared to make any order as to its costs.

*Appeal dismissed.*  
*No order as to costs.*

1973  
June 19  
—

PETRAKIS  
PANAYIDES

v

REPUBLIC  
(PUBLIC  
SERVICE  
COMMISSION)