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v.

REPUBLIC  
(PUBLIC  
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COMMISSION)

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

ANDREAS PHYLAKTOU,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

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(Case No. 19/72).

*Promotions—Promotions to the post of Administrative Officer 3rd Grade—Qualifications—Substantive qualifications—Once the candidates' said qualifications were before the respondent Public Service Commission it is not for the Court to decide whether a person appointed (or promoted) was so qualified—Where it was reasonably open to the Commission to find that he was so qualified (Aristotelous v. The Republic (1969) 3 C.L.R. 232, at p. 237, distinguished)—“Very good knowledge of English” required by the relevant scheme of service—A proper inquiry was carried out in the present case as to the possession of this qualification by the candidates—See further immediately herebelow.*

*Promotions—Paramount duty of the appropriate authority to select the most suitable candidate—Which is within the discretion of the appropriate authority (in this case the Public Service Commission)—Principles upon which the Court will interfere with the exercise of such discretion—Where the discretionary powers vested in the administrative organ are validly exercised, the Court has no power to interfere and to substitute its own conclusion for that of the organ concerned—Applicant in this case has not discharged the burden of proof which lay upon him to show that he has a striking superiority over the interested parties, which was disregarded by the respondent Commission—See further immediately herebelow.*

*Discretionary powers—Exercise of—Judicial control—See supra.*

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*Promotions—Seniority—Is not the decisive factor governing promotions—But one that should be taken into consideration and it should only prevail where all other things are equal—Applicant's seniority duly weighed by the respondent Commission.*

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*Seniority—See immediately hereabove.*

*Administrative acts or decisions—Due reasoning—In examining whether an administrative decision is duly reasoned, one has to look at it as a whole—And not by dividing it into separate compartments—Sub judice decision duly reasoned—Fully supported from the material in the file.*

*Reasoning of administrative decisions—See immediately hereabove.*

*Secondment—Filling of permanent posts by way of secondment—A step which, in the circumstances of this case, could legitimately be taken under the Law and in compliance with paragraph 5(a) of the Circular of the Council of Ministers dated 27th December, 1968, regarding filling of vacant posts in the Civil Service—See also sections 32(2) and 47 of the Public Service Law, 1967 (Law No. 33 of 1967).*

*Public Service and Public Officers—See supra, passim.*

By this recourse made under Article 146 of the Constitution the applicant seeks the annulment of the decision of the respondent Public Service Commission to promote to the post of Administrative Officer 3rd Grade four officers in preference and instead of himself; and of its decision to second to the aforesaid post two other officers. Several arguments were advanced by counsel for the applicant in support of the present recourse, that is to say :-

(1) The respondent Commission failed to carry out a proper inquiry as to the possession by the interested parties (the appointees) of the qualification of "a very good knowledge of English" as required by the relevant Scheme of Service;

(2) Three of the interested parties did not satisfy the said scheme of service as they did not possess "a very good know-

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ledge of English" in view of the marks of their English paper;

(3) The *sub judice* decision is not duly reasoned;

(4) The respondent Commission acted on a misconception of fact, inasmuch as they did not take into consideration and/or overlooked the merit, experience, ability, as well as the seniority of the applicant;

(5) Regarding the secondment of two officers to the post in question (*supra*), the *sub judice* decision is contrary to law inasmuch as the Commission filled permanent posts by *secondment* instead of by promotion or appointment.

The learned Judge of the Supreme Court did not agree with any of the views advanced by counsel for the applicant, and dismissing the recourse :-

Held, (1) *Regarding the argument under (1) hereabove :*

(A) The Commission held written examinations, heard the views expressed by the Director of Personnel who was also present at the interviews held by them, at which both the Director and the members put questions to the candidates, and took into consideration as well confidential reports and personal files of the candidates.

(B) In the light of the above, I cannot see what further inquiry could be carried out for the purpose of ascertaining whether the candidates possessed the qualifications required by the scheme of service or not.

Held, (2) *Regarding the argument under (2) hereabove :*

(A) The Commission made it clear that in addition to every other consideration they have borne in mind also the results of the said written examinations.

(B) Considering, on the other hand, the educational background of the officers and their experience in the Government service, as well as the opportunity that the respondent Commission had in interviewing the interested parties, I am not prepared to say that the said interested parties did not possess the

required, under the scheme, qualifications of good knowledge of English.

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- (C) It has been held in a number of cases that once the substantive qualifications were before the Public Service Commission, it is not for the Court to decide whether a candidate appointed or promoted was qualified in a case where it was reasonably open to the Commission to find that he was so qualified (*Vide Josephides and The Republic*, 2 R.S.C.C. 72; *Koukoullis and The Republic*, 3 R.S.C.C. 134; *Neophytou v. The Republic*, 1964 C.L.R. 280). Cf. *Aristotelous v. The Republic* (1969) 3 C.L.R. 232, at p. 237, *distinguished*; Cf. *Athos Georghiades v. The Republic* (1967) 3 C.L.R. 653).

Held, (3) *Regarding the contention under (3) hereabove, that the sub judice decision is not duly reasoned :*

- (A) In examining whether an administrative decision is duly reasoned or not, one has to look at it as a whole and not by dividing it into separate compartments.
- (B) Looking at the *sub judice* decision as a whole. I find that it is duly reasoned and fully supported from the material in the relevant files.

Held, (4) *Regarding the submission under (4) hereabove that the respondent Commission acted on a misconception of fact inasmuch as they overlooked the applicant's merit, experience and ability, as well as seniority :*

- (A) The paramount duty of the Public Service Commission in effecting promotions is to select the most suitable candidate for the post in question in all the circumstances of each particular case. In so doing, they have to decide on the totality of the circumstances pertaining to each one of the candidates and should not adopt any ready-made rigid rule (*see Theodossiou and The Republic*, 2 R.S.C.C. 44, at p. 45).
- (B) This is a matter of exercise by an administrative organ of its discretion, and so long as same is exercised in a valid manner, all material circum-

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stances taken into account, due weight given to material facts and there is no misconception of law or fact, this Court will not interfere with the exercise of such discretionary powers and will not substitute its own discretion for that of the appropriate organ (*see Papazachariou v. The Republic* (1972) 3 C.L.R. 486).

(C) In the present case, the applicant upon whom the burden of proof lay, has not discharged same by establishing that he had striking superiority over the interested parties which was disregarded so as to justify this Court to annul the *sub judice* decision as having been reached in abuse and excess of powers. (*See Evangelou v. The Republic* (1965) 3 C.L.R. 292).

(D) With regard to applicant's seniority, it appears that it was a factor taken into consideration by the respondent Commission. On the totality of the circumstances the interested parties were found to be the most suitable; and seniority being one of the factors—not the decisive one—to be taken into consideration should only prevail if all other things are equal. (*See Partellides v. The Republic* (1969) 3 C.L.R. 480).

Held, (5) *Regarding the argument under (5) hereabove that the secondment of two officers for the posts in question is contrary to law, inasmuch as the respondent Commission ought to have filled such permanent posts by promotion or appointment:*

There is no substance in this argument. The Commission did exactly what is provided under section 47 of the Public Service Law, 1967 (Law No. 33 of 1967).

*Recourse dismissed.*

Cases referred to :

*Josephides and The Republic*, 2 R.S.C.C. 72;

*Koukoullis and The Republic*, 3 R.S.C.C. 134;

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

*Aristotelous v. The Republic* (1969) 3 C.L.R. 232, at p. 237;

*Athos Georghiades v. The Republic* (1967) 3 C.L.R. 653;  
*Papazachariou v. The Republic* (1972) 3 C.L.R. 486;  
*Theodossiou and The Republic*, 2 R.S.C.C. 44, at p. 45;  
*Evangelou v. The Republic* (1965) 3 C.L.R. 292;  
*Partellides v. The Republic* (1970) 3 C.L.R. 480.

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#### Recourse.

Recourse against the decision of the respondent Public Service Commission to promote the interested parties to the post of Administrative Officer 3rd Grade, in preference and instead of the applicant.

- I. *Typographos*, for the applicant.
- S. *Nicolaidis*, Counsel of the Republic.  
for the respondent.

*Cur. adv. vult.*

The following judgment was delivered by :-

A. LOIZOU, J. : The applicant by the present recourse seeks a declaration that —

(a) The act and/or decision of the respondent Commission to appoint and/or promote Andreas Savva, Lambros Lambrou, Spyridon Efstathiou and Philippos Philippou (hereinafter called interested parties 1, 2, 3 and 4 respectively) to the post of Administrative Officer 3rd Grade, General Administrative Staff in preference and instead of the applicant, is null and void and of no effect whatsoever.

(b) That the act and/or decision of the respondent Commission to second Andreas Morphitis and Ioannis Charalambous (hereinafter called interested parties 5 and 6 respectively) to the aforesaid post, is null and void and of no effect whatsoever. The recourse against Elli Charalambous was discontinued by the applicant in the course of the hearing of the case.

The facts of the case are as follows :-

The Commission at its meeting of the 7th July, 1971 (*exhibit* 1, blue 5) considered the question of the filling of a number of vacancies in the post of Administrative

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Officers 3rd Grade, and being first entry and promotion posts, they were advertised in the official Gazette of the Republic of the 9th July, 1971. In response thereto a number of candidates applied, amongst whom the applicant and the interested parties. The Commission at its meeting of the 23rd September, 1971 (*exhibit 1, blue 6*) decided to hold written examinations, and 71 candidates in all were asked to take same. The subjects for these examinations were Greek, English and a knowledge test on the duties and responsibilities of administrative officers. The results of these examinations, so far as the applicant and interested parties are concerned, were the following :-

Name	Greek	English	About duties and responsibilities of Adm. Officer	Total
Phylactou Andreas	55	70	25	150
Andreas Savva	64	85	25	174
Lambros Lambrou	88	36	60	184
Spyridon Efstathiou	75	35	50	160
Philippos Philippou	75	22	70	167
Andreas Morphitis	80	94	30	200
Ioannis Charalambous	78	83	90	251

The Commission bearing in mind the result of the written examinations, invited for interview 19 candidates, including the applicant and the interested parties.

At its meeting of the 29th November, 1971 (*exhibit 1, blue 8*) considered the filling of nine vacancies, two of which remained unfilled on the 24th July, 1970 and seven consequential vacancies which were created as a result of the promotion or secondment of an equivalent number of officers to the post of Administrative Officers, 2nd Grade. It interviewed at two sessions, morning and afternoon, the nineteen candidates invited for the purpose. Its minutes (*exhibit 1, blues 9 and 10*) read as follows :-

“The Commission as well as the Director of the Department of Personnel 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.

As stated in the minutes of 29.11.71 (9.30 a.m.) there are 9 vacancies in the post of Administrative Officer, 3rd Grade, which may be filled as follows :-

6 on a permanent basis

3 on an unestablished basis or on secondment.

In addition to the above vacancies, there are 4 vacancies in the permanent post of Administrative Officer, 3rd Grade, which are held by officers on *secondment* or on an *unestablished basis*. These vacancies may now be filled on a permanent basis.

The Commission considered the merits, qualifications and experience of the candidates referred to above, together with those of the candidates who were interviewed in the morning of the same day, 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 in the service were also taken into consideration. In considering the above, the Commission had also in mind the results of the written examinations which were held on 21.10.71.

Bearing in mind the above, as well as the views expressed by the Director of the Department of Personnel on each one of them the Commission decided that—

(f) the following officers, who were found on the whole to be the best from the candidates interviewed, be appointed/seconded to the temporary (Ordinary) post of Administrative Officer, 3rd Grade, w.e.f. 3.1.72.

Andreas Michael Savva	— to be appointed
Lambros M. Lambrou	— — do —
Spyridon Efstathiou	— — do —
Philippos N. Philippou	— — do —
Elli Charalambous	— — do —
Ioannis Charalambous	— to be seconded
Andreas Pan. Morphitis	— — do —

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The Commission further decided that two vacancies in the post of Administrative Officer, 3rd Grade, be left unfilled for the time being, as the remaining candidates were not considered suitable for appointment."

Taking the several grounds of law on which the present recourse is based in the order in which learned counsel for the applicant argued them, I shall deal first with the contention that the Public Service Commission failed to carry out a proper inquiry as to the possession of the qualification of a very good knowledge of English required by the scheme of service (*exhibit 1, blue 11*).

In so far as the carrying out of a due and proper inquiry, we have it, that Commission held written examinations, heard the views expressed by the Director of Personnel who was also present at the interviews held by them, at which both the Director and the members put questions to the various candidates, and took into consideration as well all the material to be found in their confidential reports and personal files.

In the light of the above, I cannot see what further inquiry could be carried out for the purpose of ascertaining whether the candidates possessed the required under the scheme qualifications or not.

This brings me to the second argument advanced by counsel for the applicant to the effect that interested parties 2, 3 and 4, whose marks of the English paper were 22, 35 and 36, did not satisfy the scheme of service, as they did not possess a very good knowledge of English.

The Commission has made it clear that in addition to every other consideration, it has borne in mind also the results of these examinations. Considering the educational background of the officers and their experience in the Government Service, as well as the opportunity that the Commission had in interviewing the interested parties, I am not prepared to say that the said interested parties did not possess the required, under the scheme, qualifications of good knowledge of English.

It has been held in a number of cases that once their qualifications were before the Commission it is not for

the Court to decide whether a person appointed was qualified in a case where it was reasonably open to the Commission to find that he was so qualified. (Vide *Josephides and The Republic*, 2 R.S.C.C. 72, *Koukoullis and The Republic*, 3 R.S.C.C. 134, and *Neophytou v. The Republic*, 1964 C.L.R. 280). The case of *Aristotelous v. The Republic* (1969) 3 C.L.R. 232, at p. 237 relied upon by counsel for the applicant, should be distinguished from the present one, inasmuch as in that case the Head of the Department had drawn the attention of the Public Service Commission and gave details for his views to the effect that the interested party in that case "did not know English at a good level or any other foreign language and that he admitted that he is unable to work on or it is only with great difficulty that he can apply himself to the preparation and publication of printed matter in a foreign language and if he is appointed to the said post proposed, he was considering starting private lessons in order to improve his knowledge of English". Likewise in the case of *Athos Georghiades v. The Republic* (1967) 3 C.L.R. 653 referred to in *Aristotelous* case (*supra*) similar considerations were examined but again it was pointed out that the knowledge of English of the interested party lacked behind the required standard, whereas in the present case there has been no suggestion whatsoever from any quarter that they did not possess the required knowledge of English. The marks of the examination papers were within the knowledge of the Commission, given due weight, as it appears from the relevant minute. The fact that the marks given to them were below 50, does not by itself mean that they were not eligible under the scheme of service. If that was so and this Court were to give its own interpretation to the marks, the applicant obtained in Greek 55 marks, and it could be said that he is not eligible under the schemes of service, and, therefore, has no legitimate interest, in view of the requirement that a candidate should possess an excellent knowledge of Greek, but I do not think that this issue should be approached from that angle.

In the circumstances, therefore, I cannot subscribe to the view that the said three interested parties did not possess the required qualifications, as I am of the opinion

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that there was sufficient material before the Commission for it reasonably to come to the conclusion that the said interested parties fulfilled that particular requirement of the relevant scheme of service.

The next point is that the *sub judice* decision is not duly reasoned and in particular that part of it which deals with the non-filling of the two vacancies, in view, as it is stated, of the unsuitability of the remaining candidates, a category in which obviously the applicant was included. The case of *Papazachariou v. The Republic* (1972) 3 C.L.R. 486, has been referred to by counsel in support of the proposition that due reasoning is required.

No one is at loggerhead with this principle, but in examining whether an administrative decision is duly reasoned or not, one has to look at it as a whole and not by dividing it into separate compartments, and in the present case the decision for the non-filling of two of the posts is not the subject of the present recourse. That part of the decision should be taken as strengthening the reasoning of the decision for the non-selection of the applicant thereby considered as unsuitable for appointment.

Looking at the *sub judice* decision as a whole, I find that it is duly reasoned and fully supported from the material in the relevant files.

I shall next deal with the claim of the applicant that the secondment of interested parties Andreas Morphitis and Ioannis Charalambous is contrary to law and made in abuse of power, inasmuch as they filled permanent posts by secondment instead of by promotion and/or appointment.

It is clear from the relevant material that six of these posts were to be permanently filled and three to be filled by secondment, as they were temporarily vacated on account of the secondment of officers permanently holding same to temporary development senior posts. That these posts were in such circumstances vacated, was conceded by counsel for the applicant as well.

Section 47 of the Public Service Law, 1967 provides that when a permanent officer is required temporarily

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to perform the functions of a vacant office otherwise than in an acting capacity, or to perform special duties in a section other than the one to which his office belongs, he shall be seconded to such office or section. This is what was done in the present case. Five posts were filled on a permanent basis and in respect of two other posts which were temporarily vacated, two permanent officers were seconded, a step which, in the circumstances, could legitimately be taken under the law and in compliance with the circular of the Council of Ministers dated the 27th December, 1968 (*exhibit 11*), paragraph 5(a) thereof, regarding the filling of vacant posts in the Civil Service. Likewise, under s. 32(2) of the Law, a temporary office may be filled by the secondment of a permanent officer.

In conclusion, I may briefly deal with the contention of the applicant that the respondent acted on a misconception of fact, inasmuch as they did not take into consideration and/or ignore and overlooked the merit, experience, performance, ability and qualifications of the applicant, as well as his seniority.

Indeed it is the paramount duty of the Public Service Commission in effecting promotions to select the candidate most suitable in all the circumstances of each particular case for the post in question. In so doing, they have to decide on the totality of the circumstances pertaining to each one of them and should not adopt any ready-made rigid rule. (Vide *Theodossiou* and *The Republic*, 2 R.S.C.C. p. 44 at p. 45).

This is a matter of exercise in the first place by an administrative organ having competence in the matter of its discretion, and so long as same is exercised in a valid manner, all material circumstances taken into account, due weight given to material facts and there is no misconception of law or facts, this Court will not interfere with the exercise of such discretionary power and will not substitute its own discretion for that of the appropriate administrative organ. (Vide *Papazachariou v. The Republic (supra)*).

In the present case the applicant upon whom the burden of proof lay, has not discharged same by establishing that he had striking superiority over the inte-

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rested parties which was in no way disregarded so as to justify this Court to annul the *sub judice* decision, as having been reached in excess or abuse of power. (Vide *Evangelou v. The Republic* (1965) 3 C.L.R. p. 292).

With regard to applicant's seniority, it appears that it was a factor taken into consideration by the Commission. In the totality of the circumstances the interested parties were found to be the most suitable for the post. In not filling the remaining two posts, the Commission has given reasons for not selecting the applicant, of whose seniority they were fully aware. Seniority, as it has been said, is not the decisive factor which governs promotions, but one that should be duly taken into consideration and it should only prevail if all other things were equal. (Vide *Partellides v. The Republic* (1969) 3 C.L.R. 480). Obviously, the Commission did not find them to be so in the present case, and I find myself unable to interfere with the exercise of their discretion in the matter.

In the result and for all the aforesaid reasons, the present recourse fails and is hereby dismissed, but in the circumstances I make no order as to costs.

*Application dismissed;*  
*No order as to costs.*