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COMMISSION

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

NICOS CONSTANTINIDES,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 235/70).

Public Officers—Promotions—Post of Veterinary Inspector 2nd Grade—Applicant and interested party of equal seniority in the immediately lower grade but applicant with less practical training in the Veterinary Department—Applicant better educated but interested party on the whole superior in merit—No adequate reason established to the satisfaction of the Court enabling it to interfere with the exercise by the respondent Public Service Commission of their relevant discretionary powers—See further infra, passim.

Promotions—Head of Department—Recommendations—Special recommendation attached to the annual confidential report concerning one of the candidates for promotion (the interested party)—Fact that appropriate form was not used cannot in the particular circumstances of this case be regarded as an irregularity of a material nature justifying the annulment of the sub judice decision on that ground—See further infra, passim—Cf. supra.

Promotions—Interview of candidates—Not necessary unless there is provision requiring the Public Service Commission to hold such interview of candidates—Respondent Commission had otherwise before it all necessary material enabling it to select the best candidate—Cf. supra; see also infra.

Promotions—Head of Department—Oral recommendations at a meeting of the Public Service Commission—Adequate

recording of—Partellides v. The Republic (1969) 3 C.L.R. 480, distinguished.

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Promotions—Veterinary Inspector 2nd Grade—Performing by applicant of the duties of the post prior to the sub judice decision—Whether a factor that can lead to the annulment of the promotion of the interested party instead of the applicant.

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Interview of candidates for promotion—See supra.

Head of Department—Recommendations—See supra.

Discretionary powers—Validly exercised—Court will not substitute its own discretion for that of the administrative organ concerned—Cf. supra.

Public Service Commission—See supra, passim.

By this recourse the applicant challenges the validity of the decision of the respondent Public Service Commission to second Mr. P. Ph. (the interested party) to the temporary post of Veterinary Inspector 2nd Grade, instead of the applicant.

After reviewing the facts and disposing of a number of specific points raised by counsel for the applicant, the learned President of the Supreme Court dismissed this recourse on the broad ground that on the totality of the circumstances it was reasonably open to the respondent Commission to take the *sub judice* decision. The facts of this case are very briefly as follows :-

It is common ground that the applicant and the interested party had equal seniority in the immediately lower post; but the applicant had, at the material time, less practical training in the Veterinary Department. It is also common ground that neither of the two officers involved in these proceedings possessed any of the academic qualifications described as “desirable” in the relevant scheme of service. As regards general education the applicant was better educated than the interested party. On the other hand, Mr. Polydorou, the Director of the Department of Veterinary Services, recommended the secondment of the interested party whom he considered superior in merit. It is to be noted that the interested party was recommended for promotion in the confidential report of 1967 concerning him, whereas no such recommendation was made in relation to

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the applicant by any of the reports concerning him. It would seem that no interview of the candidates was ever held by the Commission but no such interview was required by the relevant scheme of service. Regarding the aforesaid confidential report concerning the interested party, it appears that the appropriate form was not used.

Held, (1) The fact that the appropriate form was not used in relation to the aforesaid Confidential Report for 1967 concerning the interested party (*supra*) cannot, in the particular circumstances of this case, be regarded as an irregularity of a material nature justifying the annulment of the *sub judice* decision on this ground.

(2) Nor do I find any substance in the submission of counsel for the applicant that it was necessary for the respondent Commission to interview the applicant and the interested party. Unless there is a provision requiring the Commission to adopt a certain course it is up to the Commission to regulate, on each occasion, its proceedings in a manner compatible with the due exercise of its discretionary powers. In the present case no provision exists requiring the Commission to hold such interview; and, in my opinion, it cannot be held that the fact that it did not interview the said two candidates was inconsistent, in the circumstances, with the due exercise by it of its discretionary powers; as it had the opportunity to hear the views of the Head of Department concerned and, also, it had before it the relevant annual confidential reports, it was sufficiently in a position to exercise duly its relevant powers. (See: *Petsas and The Republic*, 3 R.S.C.C. 60 and *Christofi v. The Republic* (1967) 3 C.L.R. 615).

(3) It has, also, been submitted that there is lack of due reasoning in that there do not appear in the minutes of the Commission the views of the Head of Department Mr. Polydorou. I cannot accept this submission as correct. It is true that all his views were not recorded; but in my opinion there can be no doubt that his comments made

when agreeing with the selection of the interested party instead of the applicant (as recorded at the end of the relevant minutes of the Commission) indicate with sufficient certainty what views he expressed at an earlier stage of the same meeting of the Commission, attended by him, regarding the said two candidates (*Partellides v. The Republic* (1969) 3 C.L.R. 480, C.A., *distinguished*).

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- (4) In concluding, I am of the opinion that this is a case in which there has not been established to my satisfaction any adequate reason for interfering with the exercise of the relevant discretionary powers by the respondent Commission; and I cannot substitute my own discretion for that of the Commission (see, *inter alia*, *Uludag* and *The Republic*, 3 R.S.C.C. 131; *Christou* and *The Republic*, 4 R.S.C.C. 1; *Lardis v. The Republic* (1967) 3 C.L.R. 64, at p. 75; *Kyprianides v. The Republic* (1968) 3 C.L.R. 653, at pp. 660 - 661; *Christou v. The Republic* (1968) 3 C.L.R. 715, at p. 725; *Pierides v. The Republic* (1971) 3 C.L.R. 233, at p. 249).

Recourse dismissed.

Cases referred to :

- Petsas* and *The Republic*, 3 R.S.C.C. 60;
Christofi v. The Republic (1967) 3 C.L.R. 615;
Partellides v. The Republic (1969) 3 C.L.R. 480, at p. 484;
Uludag and *The Republic*, 3 R.S.C.C. 131;
Christou and *The Republic*, 4 R.S.C.C. 1;
Lardis v. The Republic (1967) 3 C.L.R. 64, at p. 75;
Kyprianides v. The Republic (1968) 3 C.L.R. 653, at pp. 660 - 661;
Christou v. The Republic (1968) 3 C.L.R. 715, at p. 725;
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Recourse.

Recourse against the decision of the respondent Public Service Commission by virtue of which the interested party Pantelis Photiades was seconded to the temporary post of Veterinary Inspector, 2nd Grade, in preference and instead of the applicant.

L. Papaphilippou, for the applicant.

A. Frangos, Senior Counsel of the Republic,
for the respondent.

Cur. adv. vult.

The following judgment was delivered by :-

TRIANTAFYLIDIS, P. : By this recourse the applicant challenges the validity of a decision of the respondent Public Service Commission, which was taken at its meeting on the 3rd July, 1970 (see *exhibit 4*), and by virtue of which Pantelis Photiades (to be referred to hereafter as the interested party) was seconded to the temporary post of Veterinary Inspector, 2nd grade, with effect from the 1st August, 1970.

The post of Veterinary Inspector, 2nd grade, is a promotion post, as it appears from the relevant scheme of service (see *exhibit 3*).

The qualifications required for promotion to such post are :

“Practical training in the Veterinary Department coupled with some years’ experience. The possession of a certificate of the Royal Society of Health or Cyprus Pharmaceutical Chemistry Certificate or Certificate of Special Training in a branch of Veterinary Science, plus a good knowledge of English is desirable.”

It is common ground that both the applicant and the interested party had equal seniority in the immediately lower post of Permanent Veterinary Assistant, having been appointed thereto on the 1st July, 1966. An examination, however, of a comparative table showing the length of public service and the qualifications of the applicant and the interested party (see *exhibit 1*) reveals that the interested party was already in the Department

concerned on the 1st January, 1957, in the capacity of a Veterinary Foreman, whereas the applicant joined the Department much later, on the 1st November, 1961; therefore, it is useful to bear in mind, in view especially of the qualifications required under the scheme of service for the post of Veterinary Inspector, 2nd Grade, that the applicant had, at the material time, less practical training in the Veterinary Department than the interested party. It is, also, common ground that neither of the two public officers involved in these proceedings possessed any of the academic qualifications described as "desirable" in the relevant scheme of service.

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As regards general education the applicant was better educated than the interested party, because the applicant graduated from the Paphos Gymnasium, after receiving there the usual six years' secondary education, whereas the interested party had only three years' secondary education, two of which were at the Pancyprian Gymnasium in Nicosia and the other one at a secondary education school in Famagusta.

As it appears from the relevant minutes of the respondent Commission (*exhibit 4*) "the Commission, after considering the merits, qualifications, experience and seniority of all the officers holding the post of Veterinary Assistant, as reflected in their Annual Confidential Reports, and bearing in mind the views expressed by Mr. Polydorou on each one of them, decided by majority of 3 votes to 1 (Mr. Y. Louca dissenting)" that the interested party be seconded to the post concerned.

Mr. Polydorou, the Director of the Department of Veterinary Services, was present at the meeting in question of the Commission.

It is, also, recorded in the minutes of the Commission that "Mr. Louca preferred" the applicant to the interested party "because the former was better qualified than the latter"; then, it is stated in the minutes that Mr. Polydorou agreed with the secondment of the interested party to the post of Veterinary Inspector, 2nd Grade, and added that the interested party was better than the applicant and that although the interested party had less

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educational qualifications than the applicant yet the interested party was considered to be an excellent officer.

Prior to the hearing of the case, and so before the aforementioned minutes of the respondent Commission were produced at such hearing, it had been directed—because of an allegation in paragraph 4 of the Opposition to the effect that the Commission had taken into account the views expressed by Mr. Polydorou—that counsel for respondent should file a statement, signed by the Chairman of the Commission or any member thereof, setting out in a summary form the said views of Mr. Polydorou regarding the applicant and the interested party. A statement was filed, signed by Mr. Y. Louca, who had acted as Chairman of the Commission at its meeting of the 3rd July, 1970; it was stated therein that it could not be recollected what took place at that meeting and reference was made to the views of Mr. Polydorou recorded in the minutes of the Commission in relation to the comparison between the applicant and the interested party.

It is quite clear that had a copy of the minutes of the Commission been appended to the Opposition no direction would have had to be made for the filing of a statement setting out the views expressed by Mr. Polydorou regarding the applicant and the interested party, because such views could be found in the contents of the minutes.

As stated in its minutes, the respondent Commission examined the merits of the applicant and of the interested party on the basis of the annual confidential reports made in relation to them (to be referred to hereafter as the "reports"). The most recent reports were, at the material time, those in respect of the years 1967 - 1969; they show that the interested party was, during those years, better on the whole than the applicant. In this connection there should be noted, *inter alia*, that the last available reports (for 1969) which are both counter-signed by the Head of the Department, Mr. Polydorou, indicate, on comparison, the superiority of the interested party and that, though the immediately previous reports (for 1968) tend to show that both the applicant and the interested party were of equal merit there was attached

to the report concerning the interested party a special recommendation praising in very striking terms the interested party and stressing that "judging him from his knowledge, ability and work" it could easily be said "that he performs duties higher than he is obliged to by his rank". It is to be noted, moreover, that the interested party was recommended for promotion in the report in respect of 1967, whereas no such recommendation was made in relation to the applicant by any of the reports concerning him.

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Before dealing with another aspect of this case I would like to say that I find no merit in the contention of counsel for the applicant that the respondent Commission erred in taking into account the aforesaid special recommendation which was attached to the report about the interested party in relation to 1968; counsel submitted that though this recommendation is headed "Special Confidential Report" it was not written in the appropriate form for such kind of report; in my view such recommendation was, in fact, intended to record observations which could not be recorded in the appropriate part of the report—to which it was attached—due to lack of space: Even if it were to be treated as a special confidential report the fact that the appropriate form was not used cannot, in the particular circumstances of this case, be regarded as an irregularity of a material nature justifying the annulment of the *sub judice* decision on this ground.

Counsel for the applicant has submitted, also, that as the interested party had not graduated from a secondary school he should not have been treated as having any educational qualification in this respect. I cannot share this view. I am of the opinion that three years' secondary education is education of quite some value though, of course, of less value than the full six years' secondary education. So, it could not, and should not, have been completely ignored; further, in view of the qualifications required by the relevant scheme of service, which are, primarily, "practical training in the Veterinary Department coupled with some years experience"; it cannot be held that the difference in duration of the secondary school education of the applicant and the interested party should have had a decisive effect in relation to the

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decision as to who out of them was to be selected by the Commission; obviously the said difference in secondary school educational qualifications was duly borne in mind both by the Commission and the Head of the Department concerned—as it appears from the minutes of the Commission—and it has been weighed together with all other factors.

Nor do I find any substance in the submission of counsel for the applicant that, in the circumstances of this case, it was necessary for the Commission to interview the applicant and the interested party:

Unless there is a provision requiring the Commission to adopt a certain course it is up to the Commission to regulate, on each occasion, its proceedings in a manner compatible with the due exercise of its discretionary powers.

In the present instance there did not exist any provision requiring the Commission to interview the two candidates in question; and, in my opinion, it can not be held that the fact that it did not interview the said two candidates was a course which was inconsistent, in the circumstances, with the due exercise by it of its discretionary powers; as it had the opportunity to hear the views of the Head of the Department concerned and, also, it had before it the relevant annual confidential reports, it was sufficiently in a position to exercise duly its relevant powers and decide accordingly.

The reason which prevented the Commission from reaching a unanimous decision in favour of the interested party was the dissenting view of one of its members, to the effect that the applicant should be preferred because he was better qualified than the interested party; in my view it was not essential to interview the applicant and the interested party in order to deal with this point of disagreement, because the Commission had otherwise before it all necessary material enabling it to choose the, on the whole, better candidate; this was not an instance in which the Commission had to choose the person to be appointed from amongst applicants who were not already in the service, who were unknown to the Head of the Department, and in respect of whom there did not, therefore, exist annual reports (see, in this

connection, *Petsas and The Republic*, 3 R.S.C.C. 60, and *Christofi v. The Republic* (1967) 3 C.L.R. 615).

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It has, also, been submitted that there exists lack of due reasoning for the *sub judice* decision as there do not appear in the minutes of the Commission the views of the Head of the Department, Mr. Polydorou, regarding each candidate and, in particular, regarding the two public officers involved in these proceedings. I cannot accept this submission as a correct one: The reasons for the *sub judice* decision were stated fully in the said minutes of the Commission, and the views of Mr. Polydorou were only one of the factors taken into account; though, indeed, all his views were not recorded, there can be, in my opinion, no doubt that his comments, made when agreeing with the selection of the interested party instead of the applicant (as recorded at the end of the minutes of the Commission), indicate with sufficient certainty what views he expressed, at an earlier stage of the same meeting of the Commission, regarding the said two candidates.

It is correct, as counsel for the applicant has pointed out, that in *Partellides v. The Republic* (1969) 3 C.L.R. 480, it was stated (at p. 484)—in relation to “a general statement” in the minutes of the Public Service Commission that it made two promotions bearing in mind, *inter alia*, the oral recommendations of the Head of the Department concerned—that “in the opinion of the Court, without these recommendations being adequately recorded in the said minutes, so as to enable this Court to examine how and why it was reasonably open to the respondent to act upon them, notwithstanding the greater seniority of the appellant and the equally good confidential reports, such a general statement in the minutes of the respondent, as aforesaid, cannot have the effect of rendering the promotion of the interested party Gregoriades one which can be treated as having been properly decided upon in the exercise of the particular powers of the respondent”.

It is obvious from the above passage from the judgment in the *Partellides* case that such case is distinguishable from the present one: First, in the present case the minutes of the Commission contain, in addition to a

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“general statement” that the views of the Head of Department were borne in mind, a specific statement indicating his views about the applicant and the interested party; secondly, in the *Partellides* case the applicant—later the appellant in the relevant proceedings—had greater seniority than the interested party, and the respective annual confidential reports about them were equally good, whereas in the present case the applicant and the interested party had equal seniority and the confidential reports show, as already stated, that the interested party was on the whole better than the applicant.

It is, also, very useful to note that in the *Partellides* case the Court interfered with only *one* of the *two sub judice* promotions; it did not annul the other interested party’s promotion because that party had equal seniority with the applicant and it was clear, from a comparison of their qualifications and confidential reports, that the Commission was entitled to make his promotion.

Nor can it be held—as submitted by counsel for the applicant—that, in the state in which the minutes of the Commission are, this Court is not able in the present case to examine the propriety of the decision challenged by the applicant: I am of the opinion that, for the reasons given in distinguishing the present case from the *Partellides* case, there is sufficient material before me enabling me to reach the conclusion, after due examination, that the Commission acted in a manner which was reasonably open to it, when it selected the interested party instead of the applicant.

Another submission of counsel for the applicant—who has used all his ingenuity in arguing this case—was that the respondent Commission was not informed that as from September, 1968, the applicant had been assigned duties of Veterinary Inspector, which he was still performing at the material time. As it appears from a relevant letter dated 24th September, 1968 (see *exhibit 5*) such duties were, indeed, assigned to the applicant by the District Veterinary Officer in Paphos, as the applicant was at the time the senior employee of the Veterinary Department in the Paphos District; they were not, therefore, assigned to him after he had been selected as the best out of all other officers holding at the time

the same substantive post as he, but only on the ground of his seniority in the particular District where he was working.

It is not correct that this assignment of duties was a fact about which the respondent was not informed; on the contrary, it was clearly stated by the applicant himself when describing his duties in the process of filling in the part of the annual confidential reports for 1968 and 1969 which had to be completed by him; and these reports were before the respondent.

The performing by the applicant of duties of the post of Veterinary Inspector, 2nd Grade—to which he was not, eventually, seconded—is not a factor which can be treated as being of so decisive weight as to lead me to annul, on this ground, the *sub judice* decision of the Commission; particularly, as the assignment of such duties to him had not been made due to superior merit but only because of seniority in a District; it cannot be held that it was not reasonably open to the Commission not to select the applicant for secondment to the post of Veterinary Inspector, 2nd Grade, after he was compared with all the other officers in his Department, who could be so seconded, and when another such officer (the interested party) was found to be more suitable.

Lastly, it has been alleged by counsel for the applicant that the applicant is much more experienced than the interested party in all aspects of veterinary work; but as this allegation has not been substantiated during the proceedings it cannot influence their outcome.

For all the foregoing reasons this recourse has to be dismissed; this is a case in which there has not been established to my satisfaction any adequate reason for interfering with the exercise of the relevant discretionary powers of the respondent Commission; I cannot substitute my own discretion for that of the Commission (see, *inter alia*, *Uludag and The Republic*, 3 R.S.C.C. 131, *Christou and The Republic*, 4 R.S.C.C. 1, *Lardis v. The Republic* (1967) 3 C.L.R. 64, at p. 75, *Kyprianides v. The Republic* (1968) 3 C.L.R. 653, at pp. 660 - 661, *Christou v. The Republic* (1968) 3 C.L.R. 715, at p. 725, *Pierides v. The Republic* (1971) 3 C.L.R. 233, at p. 249).

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Though this recourse has failed I do not think that it was a case which was not a proper one for being placed before the Court for determination and, thus, I shall not make any order as to costs against the applicant.

*Application dismissed.
No order as to costs.*