

[MALACHTOS. J.]
IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

IOANNIS MINTZIDES,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent,

(Case No. 244/71).

1973
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IOANNIS
MINTZIDES

v
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(PUBLIC
SERVICE
COMMISSION)

Promotions—Head of Department—Recommendations—Should be given due regard in addition to all other factors—Section 44(3) of the Public Service Law, 1967 (Law No. 33 of 1967)—See further immediately herebelow.

Promotions—Promotion to the post of Inspector of Works in the Water Development Department—Applicant more senior than the officer promoted (the interested party) by almost six years—Interested party better qualified and strikingly superior in merit—On the material before them, including the recommendations of the Head of Department it was entirely open to the respondent Commission to take the decision complained of in the present recourse—Cf. further immediately herebelow.

Promotions—Seniority—One of the factors to be taken into account—But it is not the decisive one—And it should only prevail where all other things are more or less equal—See also supra. Cf. further immediately herebelow.

Promotions—Merit—Striking superiority in merit of a candidate for promotion—Should always be a decisive factor in his favour (see Theodossiou v. The Republic, 2 R.S.C.C. 44).

Public Officers—Promotions—See supra, passim.

Seniority—Merit etc.—See supra, passim.

Head of Department—Recommendations—See supra, passim.

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By this recourse made under Article 146 of the Constitution the applicant officer seeks to challenge the validity of the decision of the respondent Public Service Commission to promote the interested party to the post of Inspector of Works in the Water Development Department instead of and in preference to himself. The applicant had a seniority of almost 6 years over the person promoted (the interested party). However, in view of the striking superiority in merit of the latter, coupled with other factors such as the recommendations of the Head of Department, the learned Judge of the Supreme Court upheld the *sub judice* decision and dismissed the recourse, making no order as to costs.

The facts sufficiently appear in the Judgment of the learned Judge.

Cases referred to :

Theodossiou and The Republic, 2 R.S.C.C 44;

Partellides v. The Republic (1969) 3 C.L.R. 480.

Recourse.

Recourse against the decision of the respondent Public Service Commission to promote and/or second the interested party to the post of Inspector of Works in the Water Development Department, in preference and instead of the applicant.

L. *Papaphilippou*, for the applicant.

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

Cur. adv. vult.

The following judgment was delivered by :-

MALACHTOS, J. : The applicant in this recourse seeks a declaration of the Court that the act and/or decision of the respondent to promote and/or second the interested party, Pantelis Alexandrou, to the post of Inspector of Works in the Water Development Department, instead of the applicant, is null and void and of no legal effect whatsoever.

The salient facts of this recourse are as follows :

By letter dated 9th April, 1971, the Director-General of the Ministry of Agriculture and Natural Resources

informed the Chairman of the P.S.C. that the Minister of Finance had approved the filling of one vacancy in the post of Inspector of Works in the Water Development Department, requesting him at the same time to take the necessary steps for the filling of the said post.

The post of the Inspector of Works, according to the Schemes of Service, *exhibit 1*, is a promotion post from the immediate lower post of Technical Assistant.

At its meeting of the 30th April, 1971, at which the Director of the Water Development Department was present and expressed his views on each candidate, the Commission unanimously decided that the interested party was on the whole the best and, therefore, seconded him to the temporary post of Inspector of Works with effect as from 1/5/71.

The relative minutes of the said meeting, *exhibit 3* read as follows :

“The Commission considered the merits, qualifications, seniority and experience of all officers holding the post of Technical Assistant, as reflected in their personal files and in their annual confidential reports.

With regard to the above candidates, the Director of the Department of Water Development stated that, in order to assist the Commission in selecting the most suitable candidate, he had discussed the matter with the Senior Officers of his Department.

With regard to the candidates, the Director of the Department stated as follows :

(a) J. Mintzides : Although he is the most senior officer of his grade, he has been reported between ‘fair’ and ‘good’. He considered him as unsuitable and did not recommend him for the higher post;

(b) P. Alexandrou : He was appointed on an unestablished basis to the post of Technical Assistant with effect from 1/6/62 and as from 1/1/68 he was appointed to the same post on a permanent basis. In 1970 he attended a six months training course in hydrometeorology in Israel. He works overtime for long hours, some times until midnight, on

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the computer. He is very good in his work, he stands out among his colleagues and strongly recommended him for promotion.”

The grounds of law which the application is based, as set out therein, are the following:

1. Applicant alleges that the respondents in the light of the facts set out in the statement of facts, acted in excess and/or abuse of powers.
2. The respondents did not take into consideration the seniority, experience, merit, abilities and qualifications of the applicant.
3. The respondents acted in a discriminatory way against the applicant; and
4. The decision of the respondents was not duly reasoned.

No real or substantive arguments were advanced by counsel for applicant in support of the last two grounds of law. In fact, his whole argument in support of his case was to the effect that the respondent Commission failed to select the most suitable candidate for the post and relied entirely on the recommendations of the Director of the Water Development Department.

As it is provided in section 44(3) of the Public Service Law, 1967, the Public Service Commission in making a promotion shall have due regard, in addition to all other factors, to the recommendations made in this respect by the head of the department concerned. Such recommendations cannot be lightly disregarded but have to be taken into very serious consideration (*Michael Theodosiou* and *The Republic*, 2 R.S.C.C. 44).

Now the fact that the decision of the Public Service Commission is not contrary to the recommendations of the Director of the Water Development Department does not necessarily mean that they accepted them without carrying out a proper enquiry and without exercising their discretion in the matter. This is clear from the minutes, *exhibit 3*, to which reference is made earlier in this judgment.

As it appears from the comparable table, *exhibit 2*, the applicant was first appointed as a technical assistant

in the Water Development Department on a temporary basis on 1/7/56 and was made permanent on 1/6/62. The interested party was first appointed as a technical assistant on an unestablished basis on 1/6/62 and was made permanent on 1/1/68. So, there is a clear seniority of the applicant over the interested party of 5 years and 7 months.

As regards qualifications, however, it is clear from *exhibit 2* that the interested party is better qualified than the applicant. In particular, he is possessed of a certificate, *exhibit 11*, from the Central Meteorological Institute of Israel that he successfully completed a course in meteorology.

But there where the interested party has a striking superiority over the applicant, is on the question of merit. As it appears from the confidential reports, *exhibits 5* and *6*, the interested party is reported mostly as "excellent" whereas the applicant is reported as "good". In particular, for the last two years preceding his present promotion to the post of Inspector, special annual confidential reports were submitted by his counter-signing officer who reported him as a first class technical assistant and recommended him for promotion on the first opportunity.

No doubt, the seniority of the applicant was one of the factors to be taken into account but it was not a decisive one and should only prevail where all other factors were more or less equal (*Partellides v. The Republic* (1969) 3 C.L.R. 480). In the present case, however, the position is quite different. From the material before them, including the recommendations of the Director of the Water Development Department, it was entirely open to the Public Service Commission to take the decision complained of and promote the interested party to the post of Inspector of Works in preference to the applicant.

I am satisfied that the Public Service Commission did not act in excess or abuse of power and by taking into account all the relevant factors, arrived at the decision complained of. I even go further and say that in the present case they would be failing their duty if they acted otherwise. They could in no way disregard the striking

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superiority of the interested party as regards merit. Striking superiority of a candidate for promotion on the question of merit, should always, in my view, be a decisive factor in his favour.

For all the above reasons this recourse fails and is dismissed.

In the circumstances I make no order as to costs.

Application dismissed
No order as to costs