

[MALACHITOS. J.]
IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION
STYLIANOS STYLIANIDES.

Applicant.

and

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMITTEE.

Respondent.

(Case No. 304/70).

1973
Oct. 23
—
STYLIANOS
STYLIANIDES
v.
REPUBLIC
(EDUCATIONAL
SERVICE
COMMITTEE)

*Promotions—Applicant more senior than the interested parties
—Qualifications—Applicant and interested parties more
or less equally qualified—Merit—Interested parties ob-
viously superior in merit—Consequently it was open
to the respondent Committee to take the decision com-
plained of—Recourse dismissed.*

*Educational Service—Educational Officers—Elementary School
—Teachers—Promotions to the post of Headmaster—
See supra.*

Seniority—Qualifications—Merit—Promotions—See supra.

*Administrative Law—Administrative decisions—Taken by the
appropriate organ within its competence and discretion
—Onus on the applicant to satisfy the Court that such
organ acted contrary to law or in abuse of powers.*

This is a recourse whereby the applicant, a school-teacher in the Elementary Education Department, challenges the validity of the promotions of the interested parties to the post of Headmaster, instead of, and in preference to, himself. The Court found that in the circumstances of this case the interested parties, though less senior than the applicant and more or less equally qualified, were however obviously superior in merit; and the Court consequently held that it was open to the respondent Educational Service Committee to take the decision complained of and dismissed the present recourse.

1973
Oct. 23

STYLIANOS
STYLIANIDES

v.
REPUBLIC
(EDUCATIONAL
SERVICE
COMMITTEE)

The facts sufficiently appear in the Judgment of the Court.

Cases referred to :

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

Recourse.

Recourse against the decision of the respondent Educational Service Committee to promote the interested parties to the post of Headmaster in the Elementary Education in preference and instead of the applicant.

A. *Papadopoulos*, for the applicant.

A. *Angelides*, for the respondent.

Cur. adv. vult.

The following judgment was delivered by :-

MALACHTOS, J. : The applicant in this recourse is an elementary school teacher, class A, and was first appointed on 1/9/1949. On 23/3/1962, as it appears from his personal file, *exhibit* 16 blue 60, he applied for promotion to the post of headmaster class B, and by letter dated 20/4/62, blue 61, he was informed by the Director of Greek Education that according to the regulations in force he was not eligible for promotion as his aggregate marks on three occasions for the last preceding five years were less than 18 (18 out of 25). The relative regulations in force (*exhibit* 16, blue 132), read as follows :

“Promotions of Elementary School Teachers

1. Eligible for promotion to the post of Head mistress or Head master class B, are those who have at least 10 years of successful service.

2. Eligible for promotion to the post of Head mistress or Head master class A are those who have completed at least 4 years successful service in the post of Head mistress or Head master class B.

3. Successful service is the one graded for the last three years or on three occasions within the last five years, with aggregate marks not less than 18 (18 out of

25) and with marks not less than 3 (3 out of 5) in any one of the specific criteria.

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- 5.
- 6.
- 7. "

1973
Oct. 23

STYLIANOS
STYLIANIDES

v.

REPUBLIC
(EDUCATIONAL
SERVICE
COMMITTEE)

On 26/5/65 and on 25/5/1966 (blues 77A and 110. of exhibit 16), applicant applied again for promotion to the post of headmaster class "B" but it appears that both his applications were rejected for the same reasons as those given by the Director of Greek Education in his letter of 20/4/62. As it appears from blue 87 of exhibit 16, the aggregate marks of the applicant for the years 1960 to 1965 were all under 18 with only one exception i.e. for the school year 1964/1965 which were just 18. On 4/5/67 the applicant again applied for promotion. The respondent, however, on 5/9/67 made certain promotions to the post of headmaster class B without promoting the applicant. On 15/11/67 the applicant filed recourse No. 215/1967 which recourse was on 18/2/69 withdrawn by his then counsel after counsel for respondent made in Court the following statement :

"The appropriate authorities in the respondent Ministry of Education will re-examine, as soon as possible, the matter of the quality of the services of the applicant in the school years 1964/1965, 1965/1966 and 1966/1967, in view of the fact that the rules, attached to the opposition and relied upon by the parties at the material time, were not then properly in force, and the applicant will be considered, in the light of such re-examination, as a candidate for promotion to headmaster class B, at the next opportunity when such promotions are to be made."

By letter dated 13/11/69, blue 152, applicant was informed that the Committee of Educational Service decided to promote him to the post of school teacher, class A, as from 21/8/69 and his duties and responsibilities as well as the rest of the conditions of his service

1973
Oct. 23

STYLIANOS
STYLIANIDES

v.

REPUBLIC
(EDUCATIONAL
SERVICE
COMMITTEE)

would be those provided in the Public Educational Service Law, 1969 (10/69).

The applicant by letter dated 2/12/69, blue 153, accepted the said promotion. On 10/2/70 the applicant addressed the following letter, blue 155, to the Committee of Educational Service :

“I have the honour to refer to recourse No. 215/67 in the Supreme Court and to request you, whenever promotions of school teachers to headmasters will take place, to have in mind the relative decision of the Supreme Court dated 18/2/1969, as well as the relative proposition of counsel for the Ministry of Education.”

After exchange of certain correspondence on the subject the applicant was informed by letter dated 15/5/1970, blue 159, that his claim for promotion to the post of headmaster would be examined during the next promotions in that post.

The applicant was one of the candidates for promotion to the post of headmaster who was interviewed by the Committee of Educational Service on 17/7/1970. On 21/7/1970 the said Committee decided to promote as from 1/9/1970 the interested parties (see relative minutes, *exhibit* 14). The said decision was published in the Gazette of the Republic No. 816 dated 7/8/1970. On 25/8/1970 the applicant addressed the following letter (blue 161) to the Committee of Educational Service :

“I have the honour to refer to your letter of the 15/5/1970 in connection with my recourse No. 215/67 and to inform you that :

- (a) Certain terms of the settlement of my recourse have been violated;
- (b) I consider this violation unacceptable;
- (c) I claim that the subject of my promotion be reviewed on the basis of the said ‘judicial document’;
- (d) I insist on my promotion not later than the 15th September next;

(e) If my claim for promotion is not satisfied up to the 15th September next, I am bound in the name of justice to file a new recourse and claim the relative damage for the delay of my promotion due to my wrong grading on the part of my inspectors as from 1960."

1973
Oct. 23

STYLIANOS
STYLIANIDES

v.

REPUBLIC
(EDUCATIONAL
SERVICE
COMMITTEE)

The Chairman of the Committee of Educational Service by letter dated 14/9/1970, *exhibit* 1, referred to the letter of applicant dated 25/8/1970, informing him at the same time that it was impossible for him to be selected for promotion as the candidates selected and promoted responded more fully than the applicant to the schemes of service and the relative criteria under the legislation in force.

On 20/10/70 the applicant filed the present recourse praying, alternatively, for the following remedies :

A. A declaration of the Court that the decision of the respondents published in the Gazette of the Republic under No. 816 dated 7/8/1970, by which the interested parties were promoted from school teachers class A, to the post of headmaster, is illegal and not valid and of no legal effect whatsoever and/or was taken in excess and/or abuse of power entrusted to them and/or otherwise is contrary to law and the Constitution, and/or

B. A declaration of the Court that the decision of the respondents communicated to the applicant by their letter dated 14/9/70, *exhibit* 1, notifying him of his non-promotion to the post of headmaster is illegal and not valid and of no effect whatsoever and/or was taken in excess and/or abuse of power and/or is contrary to law and the Constitution and/or

C. A declaration of the Court that the omission of the respondents to promote the applicant to the post of headmaster is contrary to law and the Constitution and/or constitutes excess and/or abuse of power entrusted to the respondent.

The application as stated therein is based on the following grounds of law :

1. The omission of the respondents to promote the applicant to the post of headmaster, inspite of the fact

1973
Oct. 23

—
STYLIANOS
STYLIANIDES

v.
REPUBLIC
(EDUCATIONAL
SERVICE
COMMITTEE)

that they promoted to that post the nine interested parties who possessed less qualifications, constitutes discrimination against the applicant contrary to the provisions of Article 28 of the Constitution and the law.

2. The above treatment of the applicant by the respondent constitutes a violation of the well settled principles of good administration and of the general principles of administrative law.

3. The omission of the respondent to promote the applicant is contrary to the meaning and spirit which prevailed on 18/2/69 when his Recourse No. 215/67 was withdrawn without prejudice and/or to the statement and/or promise of the respondent given to the applicant on that date.

It has been argued on behalf of the applicant that the decision of the respondents complained of is wrong and is contrary to section 35 of the Public Educational Service Law, 1969 (Law 10/69) as they failed to select the best candidate. The applicant was not only senior to the interested parties but he was also better qualified. He is possessed of a General Certificate of Education of the London University. He has also an Elementary and Intermediate Certificate in book keeping of the London Chamber of Commerce. He has a great knowledge in athletic matters and, in fact, he is an athlete himself. The above qualifications of the applicant were not taken into account by the respondents and so, counsel for the applicant argued, their discretion was not properly exercised. He further argued that since the applicant was eligible for promotion under the Law, like all the interested parties, taking into consideration his aggregate marks for the last two years, he was entitled to be promoted.

Finally, he submitted, that even if we assume that the position of the applicant as regards merit and qualifications is more or less the same as that of the interested parties, then his seniority ought to prevail.

Now, promotions of educational officers are governed by section 35 of the Public Educational Service Law 1969 and, in particular, by subsections 2 and 3 thereof which read as follows:

"(2) The claims of the Educational Officers to promotion are considered on the basis of merit, qualifications and seniority.

(3) In making a promotion, the Committee shall have due regard to the confidential reports of the candidate and to the recommendations made in this respect by his Inspector."

It is clear from the comparative table, *exhibit 11*, that the applicant is senior to all the interested parties, his seniority varying from one to ten years. It is equally clear from the said table that the interested parties have better marks than the applicant, This table, *exhibit 11*, reads as follows:

<i>Interested parties</i>	<i>Years of Service</i>	<i>Marks for the last two years</i>
1. Vassos Georghiades	20	21.84—22.66
2. Costas Christodoulides	19	20.93—22.27
3. Herodotos Katsounotos	15	20.76—22.14
4. Georghios Kountouris	13	20.17—22.40
5. Michael Theodorou	12	21.06—22.36
6. Andreas Kyriakides	11	22.17—22.34
7. Phrini Vassiliou	13	23.18—22.80
8. Zoe Karamichael	14	22.51—22.02
9. Costas Spyrou	12	22.07—22.00
<i>Applicant</i>		
Stylianos Stylianides	21	20.00—18.64

The allegation of the applicant that he is better qualified than the interested parties has not in my view been substantiated. According to the schemes of service, *exhibit 15*, only post graduate studies abroad or additional certificate of studies in educational subject or certificate of successful attendance of special series of educational lessons organised by the Ministry, are considered as additional qualifications. None of these qualifications is possessed by the applicant.

One of the arguments of counsel for the respondents is that, had it not been for the statement in Court of their counsel in Recourse No. 215/67, that the claim of the applicant for promotion would be re-examined, applicant stood no chance of being invited by the Committee for an interview as according to the existing

1973
Oct. 23

—
STYLIANOS
STYLIANIDES

v.
REPUBLIC
(EDUCATIONAL
SERVICE
COMMITTEE)

1973
Oct. 23

—
STYLIANOS
STYLIANIDES

v.

REPUBLIC
(EDUCATIONAL
SERVICE
COMMITTEE)

practice, he was not eligible to be placed on the short list. This list is prepared by selecting the best out of those who are according to law eligible for promotion. This appears in the minutes of the Committee dated 9/7/70 (*exhibit 12*) which read as follows :

“The Committee considers all the elements of service contained in the personal files of the candidates who are by law eligible for promotion to the post of headmaster and after hearing the views of the Head of their Department decides, out of those school teachers class A, eligible for promotion, to invite for personal interview those having exceptional service and out of those who have very successful service those who have the highest marks, for the purpose of selection and promotion of the most suitable to the vacant posts of headmaster.”

As a result the short list was prepared and candidates including the applicant, were interviewed by the Committee on the 15th, 16th and 17th June, 1970. At its meeting of the 21st July, 1970, at which the acting Head of the Department of Elementary Education, Mr. A. Christodoulides, was present and who expressed his views on each one of the candidates, the Committee, after considering the merits, qualifications and seniority of the candidates as reflected in their personal files and confidential reports and after taking into account the views expressed by the acting Head of the Department, and having in mind the opinion they formed as a result of the interview they had with each one of them, selected for promotion the nine interested parties. Their decision appears in the minutes of the 254th meeting dated 21/7/1970 (*exhibit 14*).

It is a well established principle of administrative law that the decision of an administrative organ in cases like the one in hand, is within the competence and discretion of such organ. It is on the applicant to satisfy the Court that such organ acted contrary to law or in abuse or excess of power.

No doubt seniority is one of the factors to be taken into account and should prevail where all other factors are more or less equal (*Partellides v. The Republic* (1969) 3 C.L.R. 480).

The qualifications of the applicant and those of the interested parties may be considered as more or less the same but as regards merit the position is quite different. There is obvious superiority of the interested parties over the applicant as regards merit particularly as to their respective marks for the year 1970. So, it was entirely open to the Committee, after taking all factors into account, to take the decision complained of and promote the interested parties instead of the applicant.

Therefore, I see no reason to interfere with their decision as I am not satisfied that such decision was taken contrary to law or in excess or abuse of power.

In the result this recourse fails.

On the question of costs I make no order as to costs.

Application dismissed.

No order as to costs.

1973
Oct. 23

STYLIANOS
STYLIANIDES

v.

REPUBLIC
(EDUCATIONAL
SERVICE
COMMITTEE)