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[MALACHTOS, J.]

—  
TASOS Z.  
ANASTASSIADES  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

TASOS Z. ANASTASSIADES,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Case No. 455/71).

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*Public Officers—Promotions—Promotion to the post of Senior Economic Officer in the Ministry of Finance—Merit—Interested party superior in merit and recommended by the Head of Department—Qualifications—Applicant officer not better qualified than the interested party—Seniority—Interested party senior to the applicant—Seniority as it should be determined under section 46 (4) of the Public Service Law, 1967 (Law 33/1967)—In the circumstances, it was entirely open to the respondent Public Service Commission to promote (or appoint) the interested party in preference to the applicant—Section 44 (2) and (3) of said Law 33/1967.*

*Promotions in the public service—See supra; cf. further infra, passim.*

*Seniority—Public Officers—How determined—Section 46 of said Law 33/1967.*

*Head of Department—Recommendations concerning appointments or promotions in the public service—Should not be lightly disregarded—The fact that the decision of the Public Service Commission coincides with the views of the Head of Department does not mean that they have merely rubber-stamped such views.*

*Recommendations by the Head of Department—See immediately here-above.*

This is a recourse by the applicant public officer challenging the validity of the decision of the respondent Public Service Commission to appoint (or promote) the interested party to the post of Senior Economic Officer, Ministry of Finance, in preference to the applicant. The facts sufficiently appear in the judgment of the learned Judge dismissing the recourse.

Cases referred to:

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

*Pissas (No. 2) v. The Electricity Authority of Cyprus* (1966) 3 C.L.R. 784;

*Vafeadis v. The Republic*, 1964 C.L.R. 454.

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### Recourse.

Recourse against the decision of the respondent to promote the interested party to the post of Senior Economic Officer, in the Ministry of Finance, in preference and instead of the applicant.

*I. Typographos*, for the applicant.

*L. Loucaides*, Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult*

The following judgment was delivered by:—

MALACHTOS, J.: The applicant in this recourse applies for a declaration of the Court that the decision and/or act of the respondent to promote Charalambos Hji Panayiotou to the post of Senior Economic Officer, Ministry of Finance, instead of the applicant, is *null* and *void* and of no legal effect whatsoever.

The salient facts are as follows:

The applicant is an Economic Officer, 1st Grade, in the Ministry of Finance. He entered the Government service as a Temporary Clerical Assistant, General Clerical Staff, on 3.1.49, and was promoted to Land Clerk, 2nd Grade, at the Lands and Surveys Department on 1.1.54. On 30.1.58 he was appointed as an Assistant Labour Officer (on secondment) at the Labour Office. On 16.7.62 the applicant was promoted to the post of Temporary Employment Officer on secondment. On 1.12.66 he was appointed as Temporary Economic Officer in the Ministry of Finance and on 1.1.67 he was made permanent. On 1.1.68 he was promoted to Economic Officer, 1st Grade, a post which he is holding up to the present day.

The interested party was first appointed in the Government Service on 1.7.61 as an Accounting Officer 2nd Grade and was

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posted to the Treasury Department. On 1.10.65, he was promoted to Accounting Officer, 1st Grade and on 1.12.66 was seconded to the post of Temporary Economic Officer. On 1.1.67 he was made permanent and on 1.1.68 he was promoted to Economic Officer, 1st Grade.

On the 11th May, 1971, the Director-General, Ministry of Finance, wrote to the Chairman of the Public Service Commission requesting him to proceed with the filling of one vacancy in the post of Chief Economic Officer in the Ministry of Finance, as well as any consequential vacancies that might be created as a result. At its meeting of the 16.6.71 the Commission decided that Mr. A. C. Afxentiou, Senior Economic Officer, be promoted to Chief Economic Officer. As a result a consequential vacancy in the post of Senior Economic Officer was created.

The post of Senior Economic Officer is a promotion post from the immediate lower post of Economic Officer, 1st Grade, and, according to the scheme of service the qualifications required are a University degree or equivalent diploma or degree in Economics and a post-graduate qualification in the field of Economics. A very good background knowledge of the Island's economy (a minimum of 5 years experience in an administrative capacity), an excellent knowledge of Greek in the case of a Greek candidate or of Turkish in the case of a Turkish candidate and a very good knowledge of English. Ability to write clearly and concisely in both languages and to control staff.

It is not in dispute that both applicant and the interested party possess the necessary qualifications for the post.

At its meeting of the 26th June, 1971, the Public Service Commission, which had previously filled the vacancy of Chief Economic Officer by promoting Mr. Afxentiou, decided to consider the filling of the vacancy created in the post of Senior Economic Officer on the 17th September, 1971. The Director-General, Ministry of Finance, was requested to attend the above mentioned meeting.

At its meeting of the 17.9.71, at which Mr. G. T. Phylactis, the Director-General Ministry of Finance, was present, and expressed his views, the Commission, according to its Minutes, *exhibit 1*, considered the merits, qualifications and seniority of the applicant and the interested party, who were the only two

officers serving in the post of Economic Officer, 1st Grade, qualified for the post, as reflected in their personal files and in their annual confidential reports, and decided that the interested party was, on the whole, the best candidate and promoted him to the permanent post of Senior Economic Officer with effect as from 1.10.71. The recommendations made in this respect by the Director-General, which also appear in the Minutes, *exhibit 1*, are as follows:

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*T. Z. Anastassiades:* He is good as a 'back-room' boy. He is good in research work but, when he comes to support his opinion orally, he fails and shows hesitation. He gives in to any suggestion made by his superiors. He lacks in initiative and personality.

*Ch. Hji Panayiotou:* Although this officer was holding at first the post of Economic Officer 2nd Grade, yet, having regard to his sound academic background and his adaptability he was posted to the Ministry of Finance since October, 1961, and assigned the duties of administrative secretary and later the duties of Economic Officer. Mr. Hji Panayiotou supports his suggestions orally before his superiors with ability and sound arguments. He writes clearly and concisely in both languages (Greek and English) and recommend him for promotion".

The five grounds of law on which the application is based may be summarised as follows:

1. The respondent acted in excess and/or abuse of power and contrary to law, as in taking the decision complained of did not take into account the merit, qualifications and seniority of the applicant; and
2. The decision of the respondent is not duly reasoned. Counsel for applicant argued that the respondent Commission in promoting the applicant acted contrary to subsection 3 of section 44 of the Public Service Law, 1967 (Law 33/67).

He submitted that the Public Service Commission relied entirely on the views of the Director-General and made them as the basis of its decision. In other words, the Commission rubber-stamped the recommendations of the Director-General of the Ministry. He also argued that even if it is found by the Court that the Public Service Commission did not rely entirely on the views of the Director-General, it is clear that

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these views were not given proper attention by the Commission and were not considered in the light of the scheme of service, *exhibit 2*. He tried in an ingenious way to persuade the Court that the statement of the Director-General to the effect that the applicant is good as a “back-room” boy, coincides with the duties and responsibilities required by the scheme of service, *exhibit 2*, which are “to advise and assist in the formulation and implementation of economic policies with special emphasis on public finance policies; to perform any other duties which are assigned to him”.

He further submitted on this point that the Director-General of the Ministry of Finance was not the proper person to make the recommendations as regards the two candidates as provided by subsection 3 of section 44 of the law, and that the Head of the Department in this respect was Mr. Afxentiou, the Chief Economic Officer.

Finally, he argued that the decision of the respondent Commission was not duly reasoned, as from the recommendations of the Director-General they were not justified to select the interested party.

In the case of *Michael Theodossiou and The Republic of Cyprus, through the P.S.C.*, 2 R.S.C.C. 44, the principle has been laid down that the paramount duty of the Public Service Commission in effecting appointments or promotions is to select the candidate most suitable, in all the circumstances of each particular case, for the post in question.

In doing so the Commission has to follow the provisions of the Public Service Law, 1967 (33/67). In the case in hand, which is a case of promotion, the relevant section of the law is section 44, particularly, subsections 2 and 3 which read as follows:

“44.2 The claims of officers to promotion shall be considered on the basis of merit, qualifications and seniority.

44.3 In making a promotion, the Commission shall have due regard to the annual confidential reports on the candidates and to the recommendations made in this respect by the Head of Department in which the vacancy exists”.

On the question of merit the Commission had before them the personal files and the confidential reports of both the appli-

cant and the interested party as well as Mr. Phylactis, the Director-General of the Ministry of Finance, who expressed his views in this respect. It is clear from the file containing the annual confidential reports of the interested party, (*exhibit 12*), that since his appointment he is reported as an excellent officer throughout. In particular for the last year preceding his promotion to the present post, special confidential report was submitted by the Head of Department Mr. Phylactis reporting him as a highly intelligent officer with a very sound educational background, which together with his high sense of duty and responsibility reflect in the performance of the Ministry as a whole. He is an asset for the said Ministry, and recommended him for accelerated promotion.

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The applicant on the other hand, although reported, as it appears from the file containing his annual confidential reports, (*exhibit 10*), as an intelligent, reliable and very good officer, he is clearly not up to the standard of the interested party. It must be noted here that since 1966 Mr. Phylactis has been both the reporting and counter-signing officer of the applicant and the interested party as both were posted in the Central Administration to the Ministry of Finance directly under him. It is clear that Mr. Phylactis by stating what he had stated before the Public Service Commission was to recommend the interested party for the vacant post and there can be no doubt or ambiguity about that. So the allegation of counsel for applicant that the views of Mr. Phylactis were misconceived by the Commission and as a result their decision is not duly reasoned, cannot stand. Mr. Phylactis was certainly the head of the department of the Ministry to which the applicant and the interested party were posted and so he was the only person who was entitled under section 44 (3) of the law to be present and express his views at the meeting.

On the subject of qualifications, as I have already said, both the applicant and the interested party were qualified for the post.

As it appears from his personal file, *exhibit 9*, the applicant's material qualifications are:

- (a) B.Sc. Economics, London University;
- (b) M.A. degree awarded by the Dalhousie University, Halifax, Nova Scotia, Canada.

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The material qualifications of the interested party, as it appears from his personal file (*exhibit 11*), are the following:

- (a) The Athens Graduate School of Economics and Business Science;
- (b) Diploma in advanced studies in Economic and Social Studies—Economic Development, awarded by the Victoria University of Manchester;
- (c) Certificate in Public Administration of the University of Pittsburg.

It follows from the above that it cannot be said that the applicant is better qualified than the interested party.

As regards seniority, the interested party, although appointed in the public service about 12 years after the applicant, is considered senior to him. The question of seniority of public officers is governed by section 46 of the Public Service Law which reads as follows:

“46.—(1) Seniority between officers holding the same office shall be determined by the effective date of appointment or promotion to the particular office or grade.

(2) In the case of simultaneous appointment or promotion to the particular office or grade of the same office, seniority shall be determined according to the officers' previous seniority.

(3) Seniority between officers holding different offices with the same salary conditions shall be determined according to the dates of their appointment to their present offices or, if these dates are the same, according to their previous seniority.

(4) Seniority between officers holding offices with different salary conditions shall be determined according to the salary conditions of the respective offices.

(5) The seniority of officers holding the same office, the salary and title of which have been changed as a result of a salary revision or reorganization, shall be determined according to the officers' seniority immediately prior to such revision or reorganization.

(6) The seniority of an officer who is reappointed to the same office after a break of service shall, subject to the other provisions of this section and of any other law, be determined by the effective date of his re-appointment.

(7) In this section -

'previous seniority' means seniority of the officers concerned in the grade or office held by them immediately before they entered their present grade or office, and if such seniority is the same, previous seniority shall be determined by the same process back to the first appointments of the officers in the public service. In case seniority in the first appointments is the same, then previous seniority shall be determined by the age of the officers;

'salary conditions' in relation to an office, means the salary attached to the office, or, where a salary scale is attached to the office, the highest point on the scale".

According to the above section of the law in determining the seniority in the present case, we have to go back and find out the situation that existed before 1.12.66 when the applicant and the interested party were appointed temporary economic officers since from the said date onwards the applicant and the interested party were simultaneously promoted up to the time when the decision complained of was taken. As both officers before 1.12.66 were holding different offices with different salary conditions, the provisions of subsection 4 of section 46 apply in their case.

It is not in dispute that the salary conditions attached to the office the interested party was holding before 1.1.66 were on scale 8 whereas the salary conditions attached to the office the applicant was holding were on scale 10. According to the relevant legislation in force at the time scale 10 was lower than scale 8.

The decision of the Public Service Commission complained of in this recourse is a matter within the competence and discretion of the said Commission. It is a well established principle of administrative law that on a recourse under Article 146 of the Constitution the Court is not empowered to substitute its own discretion for that of the administration (*Chara-*

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*Iambos Pissas (No. 2) v. The Electricity Authority of Cyprus* (1966) 3 C.L.R. 784). An administrative Court can only interfere if there exists an improper use of their discretionary power or a misconception concerning the factual situation or the non taking into account of material factors (*Costas Vafeadis v. The Republic of Cyprus*, 1964 C.L.R. 454).

In the present case the Commission in exercising their discretion took into account, as they say in their decision, contained in their minutes of 17.9.71, *exhibit 1*, the merits, qualifications and seniority of the applicant and the interested party as reflected in their personal files and in their annual confidential reports. In particular, they took into account the annual confidential report in respect of the interested party for the period 1.1.70 to 31.12.70 and the recommendations of the Director-General of the Ministry of Finance who was present at the meeting. Such recommendations should weigh with the Public Service Commission in coming to a decision in a particular case and should not be lightly disregarded (*Michael Theodossiou and The Republic of Cyprus*, 2 R.S.C.C. 44).

It is clear from its wording that the said decision was taken by the Commission after a proper enquiry into the matter and cannot be said that because it coincides with the views of the Director-General of the Ministry, it means that they rubber-stamped his views.

On the material before me I am satisfied that the respondent Commission in exercising their administrative discretion in the present case have not acted in abuse or in excess of their powers conferred upon them by law and so there is nothing to warrant interference with their decision. It was entirely open to them to take the decision complained of and promote the interested party instead of the applicant.

For all the above reasons this recourse fails.

In the circumstances I make no order as to costs.

*Application dismissed; no  
order as to costs.*