

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS ANTONIOU

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

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(Case No. 174/72).

*Public Officers—Promotions—Post of Supervisor of Accounts in the Treasury Department — Merit — Qualifications — Seniority — Recommendations by Head of Department—Applicant more senior than all the interested parties and his qualifications and merit more or less equal to those of two of them—Three of the interested parties reported as superior in merit and better qualified—All interested parties (five in all) recommended for promotion by the Head of Department whereas applicant not so recommended—Sub judice decision (whereby the five interested parties were promoted in preference to the applicant) entirely open to the respondent Public Service Commission—Cf. further infra.*

*Promotions—Head of Department—Recommendations by Head of Department should not be lightly disregarded.*

*Promotions—Qualifications—Post of Supervisor of Accounts in the Treasury Department—Scheme of service requiring knowledge of English up to the Honours standard—Whether such knowledge possessed by one of the interested parties—Once the qualifications of said interested party were before the respondent Commission it is not for this Court to decide whether a person appointed or promoted was qualified in a case where it was reasonably open to the Commission to find that he was so qualified.*

*Knowledge of English—See immediately hereabove.*

*Promotions—Promotion to the post of Supervisor of Accounts in the Treasury Department—Allegation of insufficient inquiry not justified—It cannot be said that because the respondent Commis-*

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*sion adopted the views of the Accountant-General they did not enquire properly into the matter.*

*Due inquiry—See immediately hereabove.*

*Head of Department—Recommendations not to be lightly disregarded—See further supra.*

*Discretionary powers—Judicial control—Extent and scope of such control—Principles upon which an Administrative Court can interfere with the exercise of discretionary powers vested in the Administration—Principles well settled.*

By this recourse under Article 146 of the Constitution, the applicant public officer complains against the decision of the respondent Public Service Commission to promote to the post of Supervisor of Accounts in the Treasury Department the five interested parties in preference to himself. The learned Judge dismissed the recourse holding that in the circumstances it was reasonably open to the respondent Commission to act as they did; and that, therefore, he could not interfere with the exercise by the said Commission of their discretionary powers. The facts of the case sufficiently appear in the judgment of the learned Judge.

Cases referred to:

*Theodossiou and The Republic*, 2 R.S.C.C. 44, at p. 48;

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

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

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

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

### Recourse.

Recourse against the decision of the respondent to promote the interested parties to the post of Supervisor of Accounts in the Treasury Department, in preference and instead of the applicant.

*K. Talarides*, for the applicant.

*Cl. Antoniadis*, 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 of the Public Service Commission published in the Official Gazette of the Republic dated 23.6.72, under Not. No. 1193 by which Th. Mavroustakis, C. Ioannou, A. Yiasoumis, A. Aivaliotis and A. Georghiou were promoted to the post of Supervisor of Accounts in the Treasury Department, is *null* and *void* and of no legal effect whatsoever.

The post of Supervisor of Accounts, according to the relevant schemes of service is a promotion post from the immediate lower post of Accounting Officer, 1st Grade, and the required qualifications are the following:

“Wide knowledge on accounting and book-keeping with practical experience of both; wide understanding of the principles and practice relating to the examination and investigation of accounts; knowledge of English up to Honours standard with ability quickly to conduct correspondence in that language; a thorough knowledge of Government rules and regulations in so far as these relate to finance and accounts. Accounting Higher Examination of the London Chamber of Commerce or an equivalent qualification. Ability to control staff. Must have passed the examinations in Cyprus General Orders and Colonial Regulations and in Financial Instructions”.

The applicant was first appointed to the Government Service on 1.7.51 and on 9.7.62 was promoted to Accounting Officer 1st Grade.

Interested party No. 1 Th. Mavroustakis, was first appointed to the Government Service on 3.1.49 and on 1.11.64 was promoted to Accounting Officer, 1st Grade.

Interested party No. 2 Costas Ioannou, was first appointed to the Government Service on 5.11.51 and was promoted to Accounting Officer 1st Grade on 1.11.64.

Interested party No. 3 A. Yiasoumis was first appointed to the Government Service on 1.7.64 and was promoted to Accounting Officer 1st Grade on 1.10.65.

\* For final judgment on appeal see (1976) 7 J.S.C. 1137 to be reported in due course in (1975) 3 C.L.R.

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Interested party No. 4 A. Aivaliotis, was first appointed to the Government Service on 1.11.56 and on 1.1.65 was promoted to Accounting Officer 1st Grade, and

Interested party No. 5 A. Georghiou, was first appointed to the Government Service on 1.2.50 and was promoted to Accounting Officer 1st Grade on 1.11.64.

By his letters dated 23.3.72 and 8.5.72 the Director-General Ministry of Finance wrote to the Chairman of the Public Service Commission informing him that the Minister of Finance had agreed to the filling of five vacancies in the post of Supervisor of Accounts in the Treasury Department and requested their filling.

The Commission at its meeting of 6.5.72 decided that the vacancies in question be considered on 19.5.72. At its meeting of 19.5.72 at which Mr. S. Nathanael, Accountant-General, was present and expressed his views, the Commission according to its minutes, *exhibit 6*, considered the merits, qualifications and seniority of the applicant and the interested parties, as reflected in their personal files and their annual confidential reports, and decided to promote the five interested parties instead of the applicant. The recommendations made in this respect by the Accountant-General, which also appear in the said minutes, are the following:—

“ *G. Antoniou*: Although he is the most senior officer of his grade, yet he is considered as an average officer.

*Th. Mavromoustakis*: He is quite good in his work and has the abilities to supervise staff; he is better than Mr. G. Antoniou and recommended him for promotion.

*C. Ioannou*: He is very good in his work, but there was no need for the submission of a Special Confidential Report in his case. The Accountant-General recommended him for promotion.

*A. Georghiou, A. Aivaliotis and A. Yiasoumis*: They are very good in their work and recommended them for promotion. Mr. Aivaliotis is a Member of the Association of International Accountants and Mr. Yiasoumis is a graduate of the Athens School of Economics and Business Science”.

The grounds of law on which the application is based, as argued by counsel for applicant, may be summarised as follows:

1. The said decision was taken contrary to section 44 (2) of the Public Service Law 1967 (33/67).
2. Interested party A. Yiasoumis does not possess the required qualifications for the post as defined in the scheme of service; and
3. The decision complained of is not sufficiently reasoned as it was reached without due enquiry.

As regards the first ground of law counsel for applicant argued that as it appears from the confidential reports and the comparative table (*exhibit 3*), the applicant and the interested parties are more or less equal in merit and qualifications and on the authority of *Costas D. Partellides v. The Republic* (1969) 3 C.L.R. 480, the substantial seniority of the applicant over the interested parties ought to prevail. He submitted that the Public Service Commission failed in their duty to promote the applicant since he was on the whole the best candidate.

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”.

It is clear from the confidential reports of the applicant, *exhibit 7*, and those of the interested party No. 1 Themis Mavro-

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moustakis, *exhibit 8*, that they are reported more or less equal. Also, as it appears from the comparative table, *exhibit 3*, they have more or less the same qualifications. Obviously what influenced the mind of the members of the Public Service Commission to decide in favour of this interested party and disregard the applicant's seniority, is the recommendation of the head of Department. Useful reference may be made here in a passage appearing at page 48 in the *Theodossiou case supra*, which reads as follows:

“ In the opinion of the Court the recommendation of a Head of Department or other senior responsible officer, and especially so in cases where a specialized knowledge and ability are required for the performance of certain duties, is a most vital consideration which should weigh with the Public Service Commission in coming to a decision in a particular case and such recommendation should not be lightly disregarded. If the Public Service Commission is of the opinion that for certain reasons such recommendation cannot be adopted then as a rule such Head of Department or other officer concerned should be invited by the Public Service Commission to explain his views in order that the Public Service Commission may have full benefit thereof”.

As regards interested party No. 2 Costas Ioannou, he is undoubtedly reported superior to the applicant, particularly in the last four years preceding the decision complained of. In fact, there are special confidential reports in the relative file, *exhibit 9*, for the years 1968, 1969, 1970 and 1971 where he is reported as “ excellent”. On the question of qualifications, as it appears from *exhibit 3*, they have the same qualifications. So, this interested party besides the recommendations of the Head of Department was also reported as superior to the applicant.

As regards interested party No. 3 Andreas Yiasoumis, as it appears from his confidential reports, *exhibit 12*, he is reported more or less equal to the applicant as regards merit. He is, however, better qualified than the applicant as he has got a diploma of the Athens Graduate School of Economics and Business Science.

I find it convenient here to refer to the allegation of counsel for applicant that this interested party does not possess the

required qualifications for the post as defined in the scheme of service since there is nothing in *exhibit 3*, the comparative table, to show that his knowledge of English is up to the Honours standard.

I must say that I find no merit in counsel's contention on this point. It cannot be said that a candidate who admittedly is possessed of the qualifications required for the immediate lower post of Accounting Officer 1st Grade, whose knowledge of English is of the standard of the English Higher of the Cyprus Certificate examination, who has passed the examination in Colonial Regulations, Cyprus General Orders and Financial Instructions, and who is a graduate of the Athens School of Economics and Business Science, like this interested party, his knowledge of English is not up to the Honours standard.

Furthermore, in the present case the substantive qualifications of the interested party were before the Commission and it is not for the Court to decide whether a person appointed or promoted was qualified in a case where it was reasonably open to the Public Service Commission to find that he was so qualified (*Costas Neophytou v. The Republic of Cyprus*, 1964 C.L.R. page 280).

This disposes of the second ground of law as argued by counsel for applicant.

As regards interested party No. 4 Alexandros Aivaliotis, as it appears from his confidential reports; *exhibit 11*, is reported as slightly better than the applicant. He is better qualified than the applicant in that he is an Associate Member of the Association of International Accountants (A.A.I.A.) and an Associate Member of the Chartered Institute of Secretaries (A.C.I.S.).

Lastly, interested party No. 5 Andreas Georghiou is reported superior to the applicant particularly for the years 1968, 1969 and 1970. This is clear from the special confidential reports (*exhibit 10*) submitted to the Public Service Commission by his reporting officer. He is also better qualified than the applicant, as it appears from *exhibit 3* the comparative table.

As to the third point of law counsel for applicant argued that the decision complained of is not sufficiently reasoned as the recommendations of the Head of Department were not based on the contents of the confidential reports. It is clear, he

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submitted, that the Public Service Commission relied on what the head of the department recommended without enquiring as to where he based his recommendations and there is nothing to show that the Public Service Commission went through the career of each one of the candidates to evaluate each one of them. So, the decision taken by the Public Service Commission is not sufficiently reasoned as there is nothing on record to show that the case of each candidate was duly enquired into.

In the present case the Commission had before them the personal files and the confidential reports of both the applicant and the interested parties as well as the Accountant-General, Mr. Nathanael, being the Head of Department, who expressed his views. 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 (*Charalambos 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). The Public Service Commission in the present case in exercising their discretion took into account, as they say in their decision contained in their minutes of 19.5.72 (*exhibit 6*), the merits, qualifications and seniority of the applicant and the interested parties as reflected in their personal files and in their annual confidential reports, as well as the recommendations of the Head of Department. It is clear from its wording that the decision was taken by the Commission after a proper enquiry into the matter and cannot be said that because they adopted the views of the Accountant-General it necessarily means that they did not enquire properly into the matter.

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 parties instead of the applicant.



This recourse, therefore, fails.

In the circumstances I make no order as to costs.

*Application dismissed. No  
order as to costs.*

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