

1974  
Sept. 30

[MALACHTOS, J.]

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ANTONIOS  
KYRIACOU  
AND ANOTHER  
v.  
PUBLIC SERVICE  
COMMISSION

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANTONIOS KYRIACOU AND ANOTHER,

*Applicants,*

*and*

THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Cases Nos. 184/72 and 185/72).

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*Public Officers—Promotions—Post of School Clerk 1st Grade—Merit—Interested party slightly superior in merit—And recommended by Head of Department as the most suitable candidate for such post—Due weight must be given to such recommendations—Qualifications—Applicants not better qualified than the interested party who is clearly better qualified than one of them—Seniority—Regulated now by section 46 of the Public Service Law, 1967 (Law No. 33 of 1967)—Both applicants senior to interested party—On the totality of the relevant material the respondent Commission did properly exercise its discretionary powers—And this is not a case where the Court will interfere with the exercise of such discretion—Entirely open to the respondent Commission to reach the decision complained of—Principles upon which the Court is justified to interfere with the exercise of discretion by the administrative organs concerned—Paying due regard to all relevant factors—Without taking into account irrelevant ones.*

*Promotions—Paramount duty of the appointing authority—To select the most suitable candidate—Merit—Confidential reports and recommendations by Head of Department—Qualifications—Seniority one of the factors to be taken into account—Cf. further supra.*

*Promotions in the public service—See supra.*

*Discretionary powers vested in the administration—Judicial control—Principles applicable—The Court will never substitute its own discretion for that of the Administration—Principles upon which the Court will interfere—In the instant case it was entirely open*

*to the respondent Commission to take the decision complained of— Commission in reaching said decision has exercised properly its discretion after paying due regard to all relevant considerations and without taking into account irrelevant factors—Cf. supra.*

By these two recourses under Article 146 of the Constitution, tried together as they attack the same administrative decision, the applicants challenge the validity of the decision of the respondent Public Service Commission dated May 29, 1972, by which the interested party Mr. A.K. was promoted to the post of School Clerk 1st Grade instead of, and in preference to, the applicants. The applicants were senior to the interested party. On the other hand the interested party was superior in merit and qualifications. Moreover he was recommended by the Head of Department. The learned Judge reviewing the evidence on record and applying the well settled principles of administrative law regarding promotions in the public service held that it was entirely open to the respondent Commission to reach the decision complained of in these proceedings and that, therefore, this is not a case in which the administrative Court would have been justified to interfere with the exercise by the said Commission of its statutory discretion in the matter; and dismissed the recourse. The facts of the case sufficiently appear in the judgment of the learned Judge.

Cases referred to:

- Michael Theodossiou and The Republic*, 2 R.S.C.C. 44;  
*Charalambos Pissas (No. 2) v. The Electricity Authority of Cyprus* (1966) 3 C.L.R. 784;  
*Salih Shukri Saruhan and The Republic*, 2 R.S.C.C. 133, at p. 136.

Recourses.

Recourses against the decision of the respondent Public Service Commission to promote the interested party to the post of School Clerk 1st Grade, in the Ministry of Education in preference and instead of the applicants.

*Ph. Poetis*, for the applicants.

*C. Kypridemòs*, Counsel of the Republic, for the respondent.

*A. Adamides*, for the interested party.

*Cur. adv. vult.*

The following judgment was delivered by:—

MALACHTOS, J.: In these two recourses which were heard together, as they attack the same administrative act, the applicants in substance challenge the validity of the decision of the respondent Committee dated 29th May, 1972, by which the interested party, namely, Andreas Kakkouras, was promoted to the post of School Clerk 1st Grade, in the Ministry of Education with effect from the 15th June, 1972.

The relevant facts are as follows:

By letter dated 13th March, 1972, the Director-General, Ministry of Education requested the filling, *inter alia*, of one vacancy in the post of School Clerk 1st Grade. The Minister of Finance had agreed to such filling.

At its meeting of 18th March, 1972, the respondent Commission decided that the vacancy in question, which is a first entry and promotion post from the immediate lower post of School Clerk, 2nd Grade, be advertised allowing two weeks for the submission of applications. The relevant advertisement appeared in the Official Gazette of the Republic of 14.4.72.

At its meeting of 11.5.72, the Commission decided that five persons, including the two applicants, and the interested party, be invited for interview on 29.5.72.

At its meeting of 29.5.72 the respondent Commission proceeded to fill the vacancy in question.

Mr. H. Ierides, Senior Administrative Officer, was present on behalf of the Director-General, Ministry of Education. The Commission interviewed the five persons, including the applicants and the interested party. The relevant minutes of the Commission (*Exhibit 14*) read as follows:

“The Commission as well as the Representative of the Ministry of Education put several questions to all the candidates on matters of general knowledge and on matters connected with the duties of the post as shown in the relevant scheme of service.

The Commission considered the merits, qualifications and experience of the candidates interviewed as well as their performance during the interview (personality, alertness of mind, general intelligence and the correctness of

answers to questions put to them, etc.). The Personal Files and the Annual Confidential Reports of all the candidates were also taken into consideration.

The Representative of the Ministry of Education stated that on merits his Ministry considered Mr. A. P. Kakkouras as the best candidate and recommended him for promotion.

Bearing in mind all the above, the Commission decided unanimously that Mr. A. P. Kakkouras was on the whole the best and that he be promoted to the permanent post of School Clerk, 1st Grade, w.e.f. 15.6.72.

Counsel for applicants argued that the decision complained of was taken in excess and/or abuse of powers and/or contrary to the principles of Administrative Law in that the applicants were superior to the interested party having regard to their merit, qualifications and seniority and, consequently, the respondent Commission failed in its paramount duty to select the best candidate.

On the question of merit the interested party in his Annual Confidential Reports, *exhibit* 5, is reported all through as excellent.

As from 1965 to 1971 he has been receiving full marks as regards his General Assessment on all items *i.e.* ability, conscientiousness, industriousness, behaviour and school activities.

Applicant Antonios Kyriacou, although reported as excellent and receiving full marks from 1968 to 1971, as it appears from his Confidential Reports, *exhibit* 1, yet as from 1965 to 1967 he is not reported as such.

As regards the applicant in Recourse No. 185/72, namely, Michael Photiou, according to his Confidential Reports, *exhibit* 3, although he is reported as excellent, he is not given full marks for the years 1965 to 1971. So, it is clear from the Confidential Reports that the interested party is reported as slightly superior to both applicants.

In addition to the Confidential Reports, the interested party was recommended by the Department concerned as the most suitable candidate.

Passing now to the question of qualifications, the interested party, as it appears from his personal file *exhibit* 6, has the

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following qualifications: Commercial Lyceum Famagusta, 1946 to 1952; Northern Polytechnic London (part time) 1954 to 1956; Regent Polytechnic London (part time) 1956 to 1957. Passed in 1957 the exams in Mathematics for Telecommunications I and in Telecommunications (Principles) I, and in 1961 the exams in Mathematics for Telecommunications A of the City and Guilds, London.

The qualifications of applicant Antonios Kyriacou, according to his personal file, *exhibit 2*, are the following: Commercial Lyceum Famagusta 1951 to 1956; the London Chamber of Commerce Intermediate Certificate in Book Keeping 1955; Cyprus Certificate of Education exams, English Higher, Greek Higher, Mathematics A and B, History, Geography and Commerce 1954 to 1955.

The qualifications of applicant Michalakis Photiou, according to his personal file, *exhibit 4*, are: English High School, Famagusta, 1948 to 1954; English Lower, London Chamber of Commerce Book Keeping, Elementary.

So, it cannot be said that the applicants possessed better qualifications than the interested party. In fact, according to their personal files, the interested party is clearly better qualified than Michael Photiou, applicant in Recourse No. 185/72.

The last point to consider is the question of seniority. The interested party Andreas Kakkouras, was first appointed as a teacher of mathematics in the Famagusta Gymnasium on 1.9.57 up to 31.8.59. As from 1.9.61 to 30.4.64 he was a School Clerk (secretary) of the Famagusta School Committee. As from 1.5.64 to 31.3.65 he was a School Clerk 3rd Grade. On 1.4.65 he was promoted to School Clerk 2nd Grade and on 15.6.72 was promoted to School Clerk 1st Grade.

Applicant Antonios Kyriacou, was first appointed Secretary of the School Committee of the Commercial Lyceum Famagusta on 1.9.56. On 1.9.61 he was made Secretary Accountant 3rd Grade of the Committee of the Economic Gymnasium Famagusta and on 1.5.64 he was promoted to School Clerk 3rd Grade. On 1.4.65 he was promoted to School Clerk 2nd Grade.

Applicant Michael Photiou, was first appointed as Secretary, B Gymnasium Famagusta on 1.9.54. On 1.9.61 he was promoted to School Clerk 3rd Grade, a post which he held up to 1.4.65, when he was promoted to School Clerk 2nd Grade.

. It is clear from the above that both the applicants and the interested party were promoted to the post of School Clerk 2nd Grade, on 1.4.65. However, before that date, applicant Michael Photiou, was holding the post of School Clerk 3rd Grade as from 1.9.61 whereas interested party Andreas Kakkouras was holding the office of School Clerk 3rd Grade as from 1.9.64.

Applicant Antonis Kyriacou on 1.5.64, *i.e.* on the same day as the interested party, was a School Clerk 3rd Grade. Before that date he was holding the office of Secretary Accountant 3rd Grade of the Committee of the Economic Gymnasium Famagusta, as from 1.9.61, and was first appointed as Secretary of the School Committee of the Commercial Lyceum Famagusta on 1.9.56.

Seniority of officers in the Public Service is regulated by section 46 of the Public Service Law, 1967. The relevant provisions of this section applicable to the case in hand are subsections 1 and 2 which read 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”.

So, it is clear from the application of the above section to the facts of the present case that both applicants are senior to the interested party.

The decision of the respondent 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 in 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*).

In the case in hand the Commission had before them the personal files and the Confidential Reports of both applicants and the interested party, as well as Mr. Ierides, representing the Head of Department, who expressed his views. They further

interviewed all the candidates, including the applicants and the interested party. In exercising their discretion they took into account, as it appears from their Minutes, *exhibit 14*, the merits, qualifications and experience of the candidates interviewed, as well as their performance during the interview (personality, alertness of mind, general intelligence and the correctness of answers to questions put to them, etc.), and decided unanimously that the interested party was, on the whole, the best candidate and promoted him to the permanent post of School Clerk 1st Grade.

It is clear from the material before the Court that in taking the above decision their minds were influenced by the recommendation made in favour of the applicant by the Department concerned.

In the case of *Michael Theodossiou and The Republic of Cyprus, through the Public Service Commission*, 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. It is also stated at page 48 of this report that "In the opinion of the Court the recommendation of a Head of Department or other senior responsible officer, and especially so in cases where 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, a course which has not been followed in this case."

So, the respondent Commission in adopting the views of the Department concerned did not do anything else but follow the principles laid down in the above decision.

In the case of *Salih Shukri Saruhan and The Republic*, 2 R.S.C.C. 133 at page 136, it is stated that "when the authority or organ concerned has exercised its discretion in reaching a decision, after paying due regard to all relevant considerations

and without taking into account irrelevant factors, this Court will not interfere as to the exercise of such discretion unless it can be shown to the satisfaction of the Court that such exercise has been made in disregard of any provisions of the Constitution or of any law or has been made in excess or abuse of powers vested in" the authority or organ concerned.

From the material before me I am satisfied that the respondent Commission, in exercising its discretion in the present case has paid due regard to all relevant considerations and took into account all relevant factors, including the recommendation of the Department concerned and in reaching the decision complained of, has not acted in abuse or excess of the powers conferred upon it by law. So, there is nothing to warrant interference of this Court with its decision. It was entirely open to it to take the decision complained of and promote the interested party.

For the reasons stated above, both recourses fail.

There will be no order as to costs.

*Applications dismissed. No  
no order as to costs.*

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