

1974
Oct. 31

[A. LOIZOU, J.]

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MARY
CONSTANTINIDOU
AND OTHERS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MARY CONSTANTINIDOU AND OTHERS,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 91/73).

*Recourse under Article 146 of the Constitution—Legitimate interest—
Article 146.2—Recourse against promotion to the post of Radio-
grapher—Applicants not qualified for appointment (or promotion)
to the post in question under the relevant scheme of service—
Lacking, therefore, the legitimate interest as they are not directly
and adversely affected by the decision complained of—They are,
thus, not entitled to file the present recourse.*

*Legitimate interest required under Article 146.2 of the Constitution—
The presence of such interest has to be inquired into by the Ad-
ministrative Court even ex proprio motu.*

*Promotions (or appointments) in the public service—Persons not
possessing the required qualifications for such promotion (or
appointment) are not entitled to file a recourse directed against
such promotion (or appointment).*

*Held, (1) It is a well settled principle of administrative law
that a person is entitled to challenge the appointment or promo-
tion of another, if he himself is entitled to be considered for
such appointment or promotion (vide: *Uludag and The Re-
public*, 3 R.S.C.C. 131, at p. 133; *Philippou and The Republic*,
4 R.S.C.C. 139, at pp. 140–141; *Papapetrou and The Republic*,
2 R.S.C.C. 61, followed in *Neophytou v. The Republic*, 1964
C.L.R. 280, at p. 293).*

(2) An applicant is so entitled if he is qualified under the
relevant scheme of service; and in the instant case none of the

applicants was so qualified at any time relevant to this recourse, as they lacked experience in deep X-Ray work.

Recourse dismissed. No order as to costs.

Cases referred to:

Uludag and The Republic, 3 R.S.C.C. 131, at p. 133;

Philippou and The Republic, 4 R.S.C.C. 139, at pp. 140-141;

Papapetrou and The Republic, 2 R.S.C.C. 61;

Neophytou v. The Republic, 1964 C.L.R. 280, at p. 293.

This is a recourse under Article 146 of the Constitution whereby the applicants seek to challenge the promotion (or appointment) of the interested party to the post of Radiographer in the Department of Medical Services. None of the applicants did possess the required qualifications for such post; they were, thus, lacking the legitimate interest required under Article 146.2 of the Constitution; and that being so they were not entitled to file the present recourse. The facts sufficiently appear in the judgment of the learned judge, dismissing the recourse on the ground explained hereabove.

Recourse.

Recourse against the decision of the respondent Public Service Commission to promote the interested party to the post of Radiographer in the Department of Medical Services in preference and instead of the applicants.

K. Talarides, for the applicants.

Cl. Antoniadis, Counsel of the Republic, for the respondent.

A. Angelides, for the interested party.

Cur. adv. vult.

The following ruling was read by:-

A. LOIZOU, J.: By the present recourse the three applicants who are Assistant Radiographers in the Department of Medical Services, seek the annulment of the promotion of Maria Parpa (hereinafter referred to as "The interested party") to the post of Radiographer.

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This post is a first entry and promotion post and the qualifications required, according to the scheme of service (*exhibit 'C'*, Enclosure 3) are, *inter alia*, “experience in radiography and deep X-Ray work”, the latter being also referred to throughout the proceedings, as radiotherapy.

As it appears from the minutes of the meeting of the respondent Commission of the 1st December, 1972, (*exhibit 'E'*, Enclosure 9) when the filling of the vacancy in the said post was considered and decided upon, “The Commission observed from the interview that only two of the candidates—namely Miss Maria Th. Parpa and Mr. Solonas Kyrou were interested and qualified in Radiotherapy. The remaining candidates are not interested and have no experience in Radiotherapy”. This finding of the respondent Commission, the appropriate administrative organ in this respect, has not been doubted; on the contrary, it is common ground, that none of the applicants had, at any time material to the present proceedings, experience in deep X-ray work.

Upon the absence of this qualification the respondent Commission base their objection that the applicants lack legitimate interest. This ground of Law was not expressly raised by them in their Notice of Opposition, but it was brought to my notice by counsel appearing on their behalf who asked that it be determined as a preliminary legal point to the hearing of the recourse. There has been, and rightly so, no objection on behalf of the applicants and a direction to that effect was made, as litigation under Article 146 of the Constitution is a matter of public law and the presence of an existing legitimate interest has to be inquired into by an administrative Court even *ex proprio motu*.

It is a well settled principle of administrative law that a person is entitled to challenge the appointment or promotion of another, if he himself is entitled to be considered for such appointment or promotion. (*Vide Uludag and The Republic*, 3 R.S.C.C. p. 131 at p. 133 and *Philippou and The Republic*, 4 R.S.C.C. p. 139 at pp. 140 and 141 and *Papapetrou and The Republic*, 2 R.S.C.C. p. 61, followed in *Neophytou v. The Republic*, 1964 C.L.R. p. 280 at p. 293). An applicant is so entitled if he is qualified under the relevant scheme of service and in the present case none of the applicants was so qualified at any time relevant to this recourse, as they all lacked experience in deep X-Ray work.

The claim of the applicants that the post in question was wrongly allocated to the Radiotherapy Section and consequently importance was attached to the qualification of experience in deep X-Ray work, does not give the applicants a legitimate interest, inasmuch as the scheme of service requires both qualifications to be possessed by every candidate, independently of whether the post is earmarked for the Radiognostic or Radiotherapy Section.

For all the above reasons I have come to the conclusion that the applicants were not entitled to file this recourse under Article 146.2 of the Constitution, because none of them was, under the relevant scheme of service, qualified for appointment to the post in question and they all lacked legitimate interest in the matter.

Consequently, this recourse has to be dismissed on this ground, but in the circumstances I make no order as to costs.

Application dismissed. No order as to costs.

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