

1975  
July 28

EMANOUEL  
PETRIDES  
v.  
PUBLIC SERVICE  
COMMISSION

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

EMANOUEL PETRIDES,

*Applicant,*

*and*

THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Case No. 108/74).

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*Public Officers—Promotions—Assistant Land Officer—Head of Department—Public Service Commission acting contrary to his recommendations—Without giving any reasons for so acting—Sub judice promotions annulled.*

*Administrative Law—Administrative decision—Due reasoning—Public officers—Promotion—Public Service Commission acting contrary to recommendations of Head of Department without giving any reasons for so doing—Sub judice decision annulled for lack of due reasoning.*

*Head of Department—Recommendations—Disregard by Public Service Commission.*

*Due Reasoning—Administrative decision.*

As it appeared from the minutes of the Commission the latter, in taking the *sub judice* decision to promote the interested party, acted contrary to the recommendations of the Head of Department without giving any reasons for so acting.

*Held*, (1) As stated in the case of *Pissas v. The Republic* (1974) 3 C.L.R. 476 at pp. 480–481, “It is a well settled principle of Administrative Law, and there is a line of decisions of this Court bearing on this issue, that the recommendation of a Head of a Department, especially where specialized knowledge and ability were required, was a most vital consideration not likely to be disregarded, and if the Public Service Commission felt that it could not act on such recommendation, the reasons for not so acting should be clearly recorded in the minutes of the Commission for the protection of the legitimate interests,

under Article 151 in conjunction with Article 146 of the Constitution of the candidates concerned. 'Failure to do so', as stated in the case of *Theodossiou* and *The Republic*, 2 R.S.C.C. p. 44 at p. 48—'would not only render the work of this Court more difficult in examining the validity of the relevant decision of the Public Service Commission but it might deprive such Commission of a factor militating against the inference that it has acted in excess or abuse of power's' ”.

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(2) Considering all the circumstances of the case and the need for clear and cogent reasoning, the general reference to the merits, qualifications, seniority, recommendations etc. made in the minutes of the respondent Commission, cannot be considered as cogent reasons that come up to the necessary minimum standard required in the particular circumstances of this case for acting contrary to the most recent recommendation of the Head of the Department.

(3) For these reasons the *sub judice* decision is annulled for lack of due reasoning which renders it contrary to law, that is to say the established principles of Administrative Law and also in abuse and in excess of power.

*Sub judice decision annulled.*

Cases referred to:

*Pissas v. The Republic* (1974) 3 C.L.R. 476 at pp. 480–481.

**Recourse.**

Recourse against the decision of the respondent whereby the interested party was seconded to the temporary (D) post of Assistant Land Officer.

*E. Efstathiou*, for the applicant.

*V. Aristodemou*, Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

The facts sufficiently appear in the judgment of the Court delivered by:—

A. LOIZOU, J.: The applicant by the present recourse challenges the validity of the secondment of Nicolaos Roussos (hereinafter referred to as the interested party) to the temporary (D) post of Assistant Land Officer.

According to the relevant scheme of service (*exhibit 1*, enclosure 3) the post of Assistant Land Officer in the Department of Lands and Surveys, is a promotion post from the immediately lower one of Land Clerk 1st Grade, which, latter post, the applicant and the interested party hold since the 1st August, 1969 and the 1st October, 1965, respectively.

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The filling of this vacancy was considered and decided upon by the respondent Commission at its meeting of the 16th July, 1973. The minutes (*exhibit 1*, enclosure 7) as far as relevant to the present proceedings, read as follows:—

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“ The Director of the Department of Lands and Surveys stated that the candidates for promotion to the various vacant posts, were serving in different Branches of the Department and, in order to ensure a uniformity in the rating of the suitability of each candidate, he classified these candidates having regard to their merits and capabilities and after taking into consideration the views of the Senior Officers of the Department.

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.....  
The Commission then considered the merits, qualifications, seniority, service and experience of all the officers holding the post of Land Clerk, 1st Grade, as reflected in their Personal Files and in their Annual Confidential Reports.

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.....  
With regard to the candidates, the Director of the Department stated as follows:—

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- (i) .....
- (ii) .....
- (iii) M. Shakallis and N. Roussos: Their services have been satisfactory, they are the most senior officers of their grade, and are considered suitable for the post of Assistant Land Officer.

- .....
- (vi) J. Phylactis, E. Z. Petrides, K. Stassis and A. Djacouris: Their services have been satisfactory; although they are junior to the above officers,

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they are considered very suitable for the post of Assistant Land Officer”.

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5 In addition to the recommendations made orally at the meeting by the Head of the Department, the Commission had before it also the views expressed by him in his letter No. 495/57/7 of the 25th June, 1973 (*exhibit* 1, enclosure 8). In the list attached thereto the applicant is rated as very suitable for promotion, whereas the interested party is rated as suitable. The confidential reports on the applicant are very favourable. He is described as very efficient and capable officer, showing great zeal in his work and mature for promotion.

15 The interested party has also favourable reports. In the last confidential report it was observed that all duties allotted to him had been performed in a very satisfactory way and that through his steady efforts he achieved very encouraging results.

The respondent Commission in reaching the *sub judice* decision, had this to say:-

20 “ After considering the above and after taking into consideration all the facts appertaining to each one of the candidates and after giving proper weight to the merits, qualifications, seniority, service and experience of these candidates, as reflected in their Personal Files and in their Annual Confidential Reports and, having regard to the recommendations made orally at the meeting by the Head of Department as well as to the views expressed by him in his letter No. 495/57/7 of 25.6.1973, the Commission came to the conclusion that the following candidates were on the whole the best. The Commission accordingly decided that the following candidates be seconded to the permanent or temporary (D) post of Assistant Land Officer w.e.f. 1.8.73, as shown opposite their names:

.....  
N. Roussos to be seconded to the temporary (D) post.  
.....

35 The Director of the Department of Lands & Surveys agreed with the Commission’s decision regarding the secondment of the officers referred to above”.

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As it appears from the aforesaid minutes, the respondent Commission acted contrary to the recommendations of the Head of the Department made for the post. As stated in the case of *Pissas* and *The Republic* (1974) 3 C.L.R. 476 at pp. 480-481.

“ It is a well settled principle of Administrative Law, and there is a line of decisions of this Court bearing on this issue, that the recommendation of a Head of a Department, especially where specialized knowledge and ability were required, was a most vital consideration not likely to be disregarded, and if the Public Service Commission felt that it could not act on such recommendation, the reasons for not so acting should be clearly recorded in the minutes of the Commission for the protection of the legitimate interests, under Article 151 in conjunction with Article 146 of the Constitution of the candidates concerned. ‘ Failure to do so’, as stated in the case of *Theodossiou* and *The Republic*, 2 R.S.C.C. p. 44 at p. 48—‘ would not only render the work of this Court more difficult in examining the validity of the relevant decision of the Public Service Commission but it might deprive such Commission of a factor militating against the inference that it has acted in excess or abuse of power’ ”.

The respondent Commission does not appear to give any reasons for disregarding the recommendations of the Head of the Department in the present case. It may be, as learned counsel for the respondent Commission fairly stated, that they had in their minds the seniority of the interested party, but they did not expressly say so. Seniority, however, is not the decisive factor that governs promotions, but one that should be duly taken into consideration and should only prevail if all other things were equal. In any event, considering all the circumstances of the case and the need for clear and cogent reasoning, the general reference to the merits, qualifications, seniority, recommendations etc. made in the minutes of the respondent Commission, cannot be considered as cogent reasons that come up to the necessary minimum standard required in the particular circumstances of this case for acting contrary to the most recent recommendation of the Head of the Department. For these reasons the *sub judice* decision is annulled for lack of due reasoning which renders it contrary to law, that is to say the established principles of Administrative Law and also in abuse and in excess of power.

In view of this result the other grounds of law relied upon by the applicant need not be examined, particularly so, as the matter will come up for re-examination before the respondent Commission. Therefore, the *sub judice* decision is annulled.

5 Respondent to pay £15.- as against costs.

*Sub judice decision annulled.*  
*Order for costs as above.*

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