

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COSTIS KYRIACOU,

Applicant.

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 3/70).

Public Officers—Promotions—Post of Veterinary Assistant—Qualifications—Schemes of service—Requiring, inter alia, “leaving certificate of a five-year secondary school” or “general education of a standard regarded as equivalent to that of a five-year secondary school”—Interested party not holding such certificate—Failure by respondent Public Service Commission to carry out a proper or sufficient inquiry into the question of whether she had a “general education” of the aforesaid standard—Renders its decision wrong in law and in excess and abuse of its powers.

Administrative Law—Inquiry—Proper or sufficient inquiry—Public Officers—Promotions to post of Veterinary Assistant—Schemes of service—Annulment of decision of the respondent Public Service Commission through its failure to carry out a proper or sufficient inquiry into the question of whether the interested party had a “general education” of the standard laid down by the relevant schemes of service—See, also, under “Public Officers”.

The applicant in the instant recourse complains against the decision of the respondent to second the interested party to the post of Veterinary Assistant.

Under the relevant scheme of service, the qualifications required for appointment to the said post were:

“A leaving certificate of a six-year secondary school. Fair knowledge of English. Practical training and some years’ experience.

Note: (a) Candidates for appointments who hold a leaving certificate of a five-year secondary school obtained prior to the 15th August 1959; and

- (b) Public servants who joined the public service either in a permanent or in a temporary capacity before the 1st December, 1961, who hold a leaving certificate of a five-year secondary school or other equivalent qualification, or who, though not holding such a certificate, have a general education of a standard regarded as equivalent to that of a five-year secondary school,

will be considered eligible for appointment or promotion to this post if they are otherwise suitable”.

It was not in dispute that the applicant was qualified under the above scheme. The interested party, however, was not so qualified under the first paragraph of the scheme or under Note (a) thereto because he attended a secondary school for a period of 3 years only though he joined the public service before the 1st December, 1961. So the main question in the recourse was whether the interested party qualified under note (b) above, namely whether he had “a general education of a standard regarded as equivalent to that of a five-year secondary school”.

In taking the *sub judice* decision the respondent Commission stated that it considered the qualifications, merits and experience of the candidates interviewed, as well as their performance and the correctness of answers to questions put to them. But it stated nothing as to what questions were put to the interested party during the interview; and there was no other material before the Court showing whether any enquiry was carried out after the interview with regard to whether the interested party had the qualifications required under the said scheme of service.

Held, (1) The Commission has failed to carry out a proper or sufficient inquiry in order to reach the conclusion that the interested party had succeeded in satisfying it that he had a general education of a standard which could be regarded as equivalent to that of a five year secondary school.

(2) No reasons at all were given by the Commission as to why the interested party had the qualifications laid down in the scheme of service, and I think that it exercised its discretion in a defective manner.

(3) In view of the above conclusion it is clear that the intervention of this Court is justified; I would, therefore, declare that the appointment of the interested party was wrong in law and in excess or in abuse of the powers vested in the Commission. (See *Athos Georghiades and Others v. The Republic* (1967) 3 C.L.R. 653, *Aristotelous v. The Republic* (1969) 3 C.L.R. 232, and *Tourpeki v. The Republic* (1973) 3 C.L.R. 592; cf. *Pierides and Others v. The Republic* (1971) 3 C.L.R. 233).

Sub judice decision annulled.

10 Cases referred to:

Petsas and The Republic, 3 R.S.C.C. 60;

Athos Georghiades and Others v. The Republic (1967) 3 C.L.R. 653;

Aristotelous v. The Republic (1969) 3 C.L.R. 232;

15 *Tourpeki v. The Republic* (1973) 3 C.L.R. 592, at p. 603;

Pierides and Others v. The Republic (1971) 3 C.L.R. 233, at pp. 247–248.

Recourse.

20 Recourse against the decision of the respondent to second the interested party to the temporary post of Veterinary Assistant in the Department of Veterinary Services.

L. Papaphilippou, for the applicant.

A. Evangelou, Counsel of the Republic, for the respondent.

Cur. adv. vult.

25 The following judgment was delivered by:—

HADJIANASTASSIOU, J.: In these proceedings, under Article 146 of the Constitution, there were originally six applicants, but finally, the only remaining applicant, Costis Kyriakou, seeks the following relief:—

30 A declaration that “the act and/or decision of the respondent to second the interested party L. Zacharia to the temporary post of Veterinary Assistant in the Department of Veterinary Services as from November 1, 1969, is *null* and *void* and of no effect whatsoever”.

The facts, so far as relevant, are these:—

On July 18, 1968, the Council of Ministers, as it appears from an extract of the minutes, decided to request the Public Service Commission to fill a number of vacancies in the Department of Veterinary Services. 5

On July 30, 1968, the Commission at its meeting, decided, regarding the post of Veterinary Assistant, that it should be considered at a later date after the filling of all other vacancies in the Department. I should have added that the Commission decided also that the other vacancies be advertised and two weeks allowed for the submission of applications. (*Exhibit 3*). 10
Following the publication of the advertisement for the filling of the post in question, in the official Gazette of the Republic of December 20, 1968, under Not. No. 1923, and the receipt of 32 applications from interested persons, the Commission met on February, 7, 1969; and decided to interview only 16 persons out of the 32 candidates, including the applicant and the interested party. 15

It is to be added that the relevant scheme of service for the post of Veterinary Assistant is a first entry and promotion post, and the duties and responsibilities are:— 20

“ Vaccination, inspection and treatment of livestock under the direction of a Veterinary Officer. Advises livestock breeders on disease control and prevention. Execution of various schemes under supervision of senior officer, either in field or laboratory”. 25

The qualifications required are as follows:—

“ A leaving certificate of a six-year secondary school. Fair knowledge of English. Practical training and some years' experience. 30

Note: (a) Candidates for appointment, who hold a leaving certificate of a five-year secondary school obtained prior to the 15th August, 1959; and

(b) Public servants who joined the public service either in a permanent or in a temporary capacity before the 1st December, 1961, who hold a Leaving Certificate of a five-year secondary school or other equivalent qualification, or who, though not holding such a certificate, have a 35

5 general education of a standard regarded as equivalent to that of a five-year secondary school, will be considered eligible for appointment or promotion to this post if they are otherwise suitable”.

This scheme of service was approved by the Council of Ministers under its decision No. 1802 of April 19, 1962, and No. 2880 of April 4, 1963. (*Exhibit 2*).

10 On March 14, 1969, the Commission met once again with regard to the filling of two vacancies in the post of Veterinary Assistant, in the presence of Mr. Polydorou, Ag. Director of the Department of Veterinary Services. The Commission having interviewed all the candidates, including the interested party, adjourned the meeting for March 31, 1969, at 4.00 p.m. 15 (*Exhibit 12*).

In the meantime, on January 4, 1969, the Ag. Director addressed a confidential letter to the Chairman of the Public Service Commission, putting forward his views about all the candidates and pointing out that the recommendations were 20 made by the officers under whom the applicants were working and had this to say, *inter alia*, about the interested party:—

25 “ He is recommended by his superior officer. He is very suitable for the hard field work to which he adopted himself fully in spite of his short service as Veterinary Foreman. I strongly recommend his appointment to the post of Veterinary Assistant”. (*Exhibit 8 (b)*).

Then, in dealing with a number of veterinary foremen, including the applicant, the Ag. Director had this to say:—

30 “ They are Veterinary Foremen since August, 1968. They are qualified and adopted themselves to the field work and are suitable to the post of Veterinary Assistant. I recommend them for favourable consideration”. (*Exhibit 8 (c)*).

35 On March 31, 1969, the Commission met again in order to fill the vacancies in the post in question, and considered “the merits, qualifications and experience of all those who were interviewed on March 14, 1969, 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 Commission further considered “the merits,

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qualifications and experience of the officers who were holding the temporary (ordinary) Post, as well as the temporary (development) post of Veterinary Assistant and decided to appoint certain officers”, but I need not refer to them by name. Because the Ag. Director of the Department stated to the Commission that two more vacancies would be created in the next two or three months, “the Commission decided that the following officers be short-listed in order of priority for appointment to the above vacancies in due course:— Loizos Zacharia and Demetrios Kounnamas”. (See extract from the minutes, *Exhibit 15*).

On September 25, 1969, the Commission met again for the filling of other vacancies in the Department of Veterinary Services and after referring to the minute of March 31, 1969 regarding the shortlisting of Loizos Zacharia and Demetrios Kounnamas and having considered “the merits, qualifications and experience of the officers who were short-listed including those who were holding the temporary (Ordinary) or temporary (Development) post of Veterinary Assistant, as reflected in their Annual Confidential Reports and bearing in mind the recommendations made by the Director of the Department of Veterinary Services, decided that

“(iii) Mr. Loizos Zacharia who was holding on secondment the temporary (Development) post of Veterinary Foreman, 2nd Grade, be seconded to the temporary (Development) post of Veterinary Assistant w.e.f. 1.11.69”. (*Exhibit 17*).

The applicant, feeling aggrieved because of the decision of the Commission to second the interested party to the post in question, filed the present recourse and the application was based on four points of law:—

“ 1. The act of the respondents is illegal as being contrary to s. 47 of the Public Service Law, 1967. Under the said section and the principles of Administrative Law the secondment of a public officer constitutes, in view of its nature, a temporary measure and does not constitute an organic change, because the officer seconded continues to belong organically to the service from which he was seconded. In the instant case, the Preventive Service from which the interested party ‘was seconded’ has been abolished by Law 45 of 1967.

2. The act of the respondents constitutes in substance 'promotion' of the interested party and same was made in an irregular manner and in excess and/or abuse of power because

5 (a) The post of Veterinary Assistant was not published.

(b) The respondents overlooked the striking superiority of applicants over the interested party with regard to qualifications, seniority, experience and merit.

10 3. Respondents acted under a misconception of the facts because the interested party prior to his 'secondment' was not serving at the Preventive Service but at the Veterinary Services as a Veterinary Foreman with effect from the 1st December, 1967.

15 4. The interested party does not possess the qualifications required by the schemes of service for the post of Veterinary Assistant, because he is not a graduate of a school of secondary education, but only of an elementary school and he has not any other supplementary education".

20 On February 28, 1970, counsel on behalf of the respondent filed an opposition and alleged that "the decision and/or act complained of, was lawfully and properly taken after a careful consideration of all the facts and circumstances of the case and upon a lawful and proper exercise of the discretion vested in the respondents".

25 The qualifications of the applicant and the interested party appear from the comparative table before me. The applicant has attended the Nicosia College for a period of 6 years and is a graduate of that school. Regarding his services, it appears that he joined the department of Veterinary Services on August
30 1, 1968, as a Veterinary Foreman, 2nd grade.

The interested party has attended the Gymnasium of Paphos for a period of 3 years only. Regarding his service, he was employed by the Customs and Excise Department, as a Preventive man in June 1961, where he remained serving until
35 November, 1967. Then, his post was abolished by virtue of Law 45/67 in July, 1967. In spite of that, for reasons not put forward before me, the interested party was not dismissed but he was kept in the same department performing the same duties and he was treated as a Government officer and in fact had the

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duties and responsibilities of a public servant. He, the interested party, together with other officers who were in the same position as he was, were considered as redundant personnel, and a provision to that effect appeared in the annual budgets of 1970 and 1971. Thus, it appears that although the post was abolished, those officers including the interested party, remained as redundant personnel apparently with a view, when circumstances changed, to appoint them to other posts. With this in mind, the interested party was seconded to the development post of Veterinary Foreman, 2nd grade on December 1, 1967, and then he was seconded again to the post of Veterinary Assistant (Development) on November 1, 1969, a post he is holding until today.

The first question to be decided on this recourse is whether the interested party qualifies under the scheme of service. It has been said by counsel on behalf of the applicant in support of ground 4 of the points of law—resisted by counsel for the Commission—that the Commission has acted in excess or in abuse of powers because it has failed to carry out a sufficient enquiry as to whether the interested party qualified under the scheme of service.

There is no doubt that in determining whether a candidate did in fact possess the required qualifications, including experience, falls within the discretion of the Commission, and this Court could only examine whether on the material before it, such discretion was properly exercised. (*Christoforos G. Petsas and The Republic, (Public Service Commission)* 3 R.S.C.C. 60).

In the present case, it is true, that in the minutes of the Commission it is stated that it considered the qualifications, merits and experience of the candidates interviewed, as well as their performance and the correctness of answers to questions put to them etc. But it is also true that nothing has been clearly stated or specifically mentioned as to what questions were put to the interested party during the interview; indeed, I found no other material to show whether any other enquiry was carried out after the interview with regard to whether the interested party had the qualifications required under the said scheme of service. There is no doubt, of course, that the interested party joined the public service before December 1, 1961. But the question remains whether in the absence of a leaving certificate the applicant had a general education of a standard regarded as equivalent to that of a five year secondary school.

It is a well-settled principle that the interpretation of a scheme of service and its application will not be interfered with by the Court so long as such interpretation was reasonably open to the Commission. The application, however, by the Commission of a scheme of service, to the circumstances of each particular case, had to be made after sufficient enquiry regarding all the considerations of each applicant.

In *Athos Georghiades and Others v. The Republic*, (1967) 3 C.L.R. 653, the Court, dealing with the question whether there was a sufficient enquiry by the Commission, had this to say:—

“ The question of the standard of knowledge of English of this interested party should have been sufficiently enquired into by the Commission for the purpose of applying the scheme of service, through an examination written or oral, and not merely by a few questions at the interview.

I find, therefore, that the Commission has not conducted the sufficiently necessary enquiry into a most material aspect of the matter and that, therefore, it exercised its discretion in a defective manner, leading to its decision regarding the appointment of this interested party being wrong in law and in excess and abuse of powers; and, thus, it has to be annulled (see *HjiLouca and The Republic*, (1966) 3 C.L.R. 854”).

This reasoning was adopted and followed in *Aristotelous v. The Republic* (1969) 3 C.L.R. 232.

In *Tourpeki v. The Republic (Public Service Commission)* (1973) 3 C.L.R. 592, the Court, dealing with the question of qualifications, said at p. 603:—

“ Consequently, I find that the Commission has not conducted the sufficiently necessary inquiry into such a most material factor and, therefore, it exercised its discretion in a defective manner; so the *sub judice* decision of the respondents having been arrived at contrary to the accepted principles of Administrative Law and in abuse or excess of powers, is *null* and *void* and of no effect whatsoever.

Moreover, the outcome of such inquiry should have appeared in the reasoning of the *sub judice* decision and in case it was found by the Commission that the diploma possessed by the applicant was constituting an advantage,

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then convincing reasons should have been given for ignoring it, inasmuch as the interested party was holding the lower post on secondment, as against the applicant who had been holding same substantively, such preferment, as already stated, constituting an exceptional course. I, therefore, annul the decision for lack of due reasoning which makes the *sub judice* decision contrary to law and in excess and abuse of power". 5

I would also refer to what I said in *Pierides and Others v. The Republic (Public Service Commission and Another)*, (1971) 3 C.L.R. 233 (a case clearly *distinguishable*) regarding one of the interested parties who, although he did not possess the academic qualifications required under the scheme of service, nevertheless, he was promoted because there was sufficient material before the Commission justifying it to deviate from the provisions of Regulation 14, when *inter alia*, the career and the successful service of this candidate would justify such deviation. In enquiring what were the requirements of Regulation 14, I said at pp. 247-248:- 10 15

“ In my opinion, the Public Service Commission had to be satisfied whether these two officers could be promoted in deviation of the requirement with regard to academic qualifications once the career of each officer, as well as his successful service would justify such deviation. 20

Having considered the matter carefully, I find myself unable to agree with the contention of counsel that the Public Service Commission misinterpreted the effect of Regulation 14, and that it acted contrary to the true intent of that regulation. It is true, of course, that before embarking to promote the interested party. Mr. Ipsarides in preference and instead of the applicants, the Public Service Commission did not place on record its views regarding the construction of Regulation 14. But, I would, at the same time, state that after going through the minutes, it is made clear to me that when the Commission embarked in deciding the question of promotions, it was aware that both Mr. Ipsarides and Mr. Nicolaou did not possess the special academic qualifications; and in considering them as candidates, and after hearing the recommendations of the Director-General of the Ministry of Foreign Affairs, the Commission must have decided that in the case of Mr. Ipsarides, it was satisfied that he brought himself within 25 30 35 40

the four corners of that regulation, viz., that because of his career and of his successful service, a deviation from the special academic qualifications was justified in his case”.

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- 5 In the light of the above authorities, with the reasoning of which I respectfully agree, and having regard to what I said earlier, I am clearly of the view that the Commission has failed to carry out a proper or sufficient inquiry, in order to reach the conclusion that the interested party had succeeded in satisfying it that he had a general education of a standard which could be regarded as equivalent to that of a five year secondary school. Unfortunately, I would state that no reasons at all were given by the Commission as to why the interested party had the qualifications laid down in the scheme of service, and
- 10 I think that it exercised its discretion in a defective manner. In view of this conclusion, it is clear that the intervention of this Court is justified, and I would, therefore, declare that the appointment of the interested party was wrong in law and in excess or in abuse of the powers vested in the Commission.
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- 20 In these circumstances, and as the case has to be re-examined by the Commission in the light of this judgment, I think it is no disrespect to counsel if I will not proceed to deal with the rest of the points raised and argued before me. The Order of the Court is, therefore, that the decision of the Commission is
- 25 *null* and *void* and of no effect whatsoever, but in view of the numerous adjournments, I do not propose making an order for costs.

*Sub judice decision annulled.
No order as to costs.*