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[TRIANTAFYLIDIS, P., STAVRINIDES, L. LOIZOU,  
HADJIANASTASSIOU, A. LOIZOU, JJ.]

GEORGHIOS  
ANTONIOU  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

GEORGHIOS ANTONIOU,

*Appellant.*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Revisional Jurisdiction Appeal No. 144).

*Public Officers—Promotions—Seniority—Appellant by 2 1/2 to 3 years senior to the interested parties—Described as an average officer by Head of Department and not recommended for promotion—Interested parties so recommended—Though one does not have to be “exceptional” in order to enjoy the benefit of the advantage of seniority the Public Service Commission has exercised its relevant discretionary powers within the proper for the purpose limits—Because it was reasonably open to it to find, on the basis of the reasons for which the Head of Department recommended the interested parties as being more suitable, that the candidates before it were not otherwise more or less equal—Therefore, this was not a case where seniority ought to have been treated as a decisive factor—Partellides v. Republic (1969) 3 C.L.R. 480, distinguished—Moreover outcome in each case of this nature must depend on its own particular circumstances.*

*Public Officers—Promotions—Qualifications—Scheme of service requiring knowledge of English up to standard of “Honours” examinations—Court has to assume that the Commission had duly in mind the required standard of knowledge of English and felt reasonably satisfied that interested party possessed such knowledge—There being nothing before the Court to indicate that the Commission was not of this view, Court has to allow presumption of regularity to operate in favour of the Commission’s decision in the matter.*

*Public Officers—Promotions—Head of Department—Recommendations of, fully consistent with confidential reports—Commission not unduly influenced by his description of the qualifications of the interested parties.*

*Administrative Law—Presumption of regularity—Allowed to operate in favour of a decision of the Public Service Commission regarding possession by a candidate of the qualifications specified by the scheme of service.*

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5 The appellant complains against the dismissal of his recourse by means of which he challenged the validity of the promotions of the interested parties to the post of Supervisor of Accounts.

10 When the Public Service Commission met to make the *sub judice* promotions the Head of Department recommended all interested parties for promotion but he did not so recommend the applicant and stated that “although he is the most senior officer of his grade, yet he is considered as an average officer”.

Counsel for the applicant contended:

15 (a) That the Commission wrongly disregarded his substantial seniority (varying from 2 1/2 to 3 years) over the interested parties because in all other respects the candidates concerned were more or less equal.

20 (b) That the recommendations of the Head of Department were not supported by the contents of the relevant annual confidential reports.

(c) That the Head of Department, in describing the academic qualifications of two of the interested parties, tried to influence unduly the Commission by presenting such qualifications as amounting to special advantages.

25 (d) That in the case of one of the interested parties (Yias-soumis) there was not carried out a sufficient inquiry in order to ascertain whether he possessed the required knowledge of English (up to the “Honours” standard), as specified in the scheme of service.

30 With regard to the last contention the factual position was that this interested party had been promoted to Accounting Officer, 1st Grade, like the rest of the candidates, and that for such promotion there was required knowledge of English up to the standard of the “English Higher Examination” of the Cyprus Certificate of Education. Both the “Honours” examination in English and the said “English Higher Examination” have ceased to be held long ago, and this interested party had not sat for such examinations; so, his knowledge of English had to be appraised by the Commission.

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*Held, (I) with regard to contention (a) above:*

(1) One does not have to be “exceptional” in order to enjoy the benefit of the advantage of seniority. But, on the other hand, it appears that the Commission has exercised its relevant discretionary powers within the proper for the purpose limits, because it was reasonably open to it to find, on the basis of the reasons for which the Head of Department recommended the interested parties as being more suitable, that the candidates before it were not otherwise more or less equal, and, therefore, this was not a case where seniority ought to have been treated as a decisive factor. (*Partellides v. The Republic* (1969) 3 C.L.R. 480, *distinguished*).

(2) In any event the outcome in each case of this nature must depend on its own particular circumstances and it cannot be inevitably governed by the outcome in any other case, however comparable that case may, at first sight, appear to be.

*Held, (II) with regard to contention (b) above:*

This contention is not borne out by a comparison of the said recommendations and reports. What the Head of Department stated before the Commission, concerning the appellant, was fully consistent with the relevant confidential reports; and it is, also, clear from such reports that he considered, long before the crucial meeting of the Commission, at least two of the interested parties as deserving promotion. (See *Morphis v. The Republic*, reported in this Part at p. 255 *ante*).

*Held, (III) with regard to contention (c) above:*

On a fair reading of the pertinent part of the minutes of the Commission we cannot attribute such a sinister intention to the Head of Department; we think that he was only trying to explain to the Commission the exact nature of the qualifications of candidates whom he was recommending for promotion.

*Held, (IV) with regard to contention (d) above:*

As stated in *Zinieris (No. 1) v. The Republic* (reported in this part at p. 13 *ante*, at p. 19) we must assume that the Commission had duly in mind the required standard of knowledge of English and felt reasonably satisfied that the interested party concerned possessed such knowledge; because, as there is nothing before us to indicate that the Commission was not of

this view, we must allow the presumption of regularity to operate in favour of the Commission's decision in the matter.

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*Appeal dismissed.*

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Cases referred to:

- 5 *Partellides v. The Republic* (1969) 3 C.L.R. 480;  
*Morphis v. The Republic* (reported in this Part at p. 255 *ante*);  
*Zinieris (No. 1) v. The Republic* (reported in this Part at p. 13 *ante*, at p. 19).

### Appeal.

- 10 Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Malachtos, J.) given on the 25th April, 1974 (Revisional Jurisdiction Case No. 174/72) whereby his recourse against the promotions of the interested parties to the post of Supervisor of Accounts was dismissed.

- 15 *K. Talarides*, for the appellant.

*Cl. Antoniades*, Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

The judgment of the Court was delivered by:-

- 20 TRIANTAFYLIDIS, P.: The appellant complains against an at first instance decision\* of a Judge of this Court by means of which there was dismissed his recourse against the promotions to the post of Supervisor of Accounts of five other public officers (who are to be referred hereinafter as "the interested parties").

- 25 The appeal has not been pressed in respect of two of these officers, Ioannou and Georghiou, and, so, we have to consider only whether the trial Judge has correctly dismissed the recourse in so far as it relates to the promotions of the other three interested parties, namely Mavromoustakis, Yiasoumis and Aivaliotis.

- 30 It has been contended on behalf of the appellant that he had substantial seniority (varying from 2 1/2 to 3 years) over the interested parties in the immediately lower post of Accounting Officer, 1st Grade, and that such seniority was wrongly disregarded by the respondent Public Service Commission because

\* Reported in (1974) 3 C.L.R. 237.

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in all other respects the candidates concerned were more or less equal.

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The material part of the relevant minutes of the Commission is as follows:-

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“The Commission considered the merits, qualifications, seniority and experience of all officers serving in the post of Accounting Officer, 1st Grade, as reflected in their Personal Files and in their Annual Confidential Reports. 5

With regard to the candidates, the Accountant-General stated as follows: 10

*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. 15

*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. 20

*A. Georghiou, A. Aivaliotis and A. Yiassoumis:* 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. Yiassoumis is graduate of the Athens School of Economics and Business Science. 25

Bearing in mind all the above, the Commission decided that the following officers were on the whole the best and that they be promoted to the permanent post of Supervisor of Accounts w.e.f. 1.6.72: 30

*Th. Mavromoustakis*

*C. Ioannou*

*A. Georghiou*

*A. Aivaliotis*

*A. Yiassoumis.” 35*

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5 It appears, from its minutes, that the Commission considered all pertinent factors, on the basis of the material before it, and it seems that it paid due regard to the recommendations of the Accountant-General, as the Head of the Department concerned, who happened to be, also, the countersigning officer on the most recent annual confidential reports in respect of all the candidates involved in the present proceedings.

10 We should say that we have felt some anxiety because of the fact that the most senior candidate was not selected for appointment even though he was described as an "average officer"; one does not have to be "exceptional" in order to enjoy the benefit of the advantage of seniority. But, on the other hand, it appears that the Commission has exercised its relevant discretionary powers within the proper for the purpose limits, because it was reasonably open to it to find, on the basis of  
15 the reasons for which the Head of Department recommended the interested parties as being more suitable, that the candidates before it were not otherwise more or less equal, and therefore, this was not a case where seniority ought to have been treated  
20 as a decisive factor. So, in this respect, the present case is distinguishable from that of *Partellides v. The Republic*, (1969) 3 C.L.R. 480, where there had not been recorded in the Commission's minutes any specific views of the Head of Department concerned which could be treated as justifying the course of  
25 overlooking the seniority of the appellant in that case; and, in any event, we should stress, while dealing with this point, that the outcome in each case of this nature must depend on its own particular circumstances and it cannot be inevitably governed by the outcome in any other case, however comparable  
30 that case may, at first sight, appear to be.

It has been submitted on behalf of the appellant that the recommendations of his Head of Department were not supported by the contents of the relevant annual confidential reports. But, in our view, this contention is not borne out by a comparison of the said recommendations and reports; what the Head  
35 of Department stated before the Commission, concerning the appellant, was fully consistent with the relevant confidential reports; and it is, also, clear from such reports that he considered, long before the crucial meeting of the Commission, at least two of the interested parties as deserving promotion.  
40 Thus, as in *Morphis v. The Republic* (reported in this Part at p. 255 ante), we find really nothing inconsistent between the

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views expressed by the Head of Department at the meeting of the Commission and what is stated in the annual confidential reports about the candidates concerned.

Another argument advanced on behalf of the appellant is that the Head of Department, in describing the academic qualifications of two of the interested parties, tried to influence unduly the Commission by presenting such qualifications as amounting to special advantages, whereas they were nothing more than qualifications equivalent to the qualifications required by the relevant scheme of service. On a fair reading of the pertinent part of the minutes of the Commission we cannot attribute such a sinister intention to the Head of Department; we think that he was only trying to explain to the Commission the exact nature of the qualifications of candidates whom he was recommending for promotion.

The last issue with which we have to deal is the allegation that in the case of interested party Yiassoumis there was not carried out a sufficient inquiry in order to ascertain whether he possessed the required knowledge of English (up to the “Honours” standard), as specified in the scheme of service

We know that this interested party had been promoted to Accounting Officer, 1st Grade, like the rest of the candidates, and that for such promotion there was required knowledge of English up to the standard of the “English Higher Examination” of the Cyprus Certificate of Education. Both the “Honours” examination in English and the said “English Higher Examination” have ceased to be held long ago, and this interested party had not sat for such examinations; so, his knowledge of English had to be appraised by the Commission. As stated in *Zimeris (No. 1) v. The Republic* (reported in this Part at p. 13 ante, at p. 19), we must assume that the Commission had duly in mind the required standard of knowledge of English and felt reasonably satisfied that the interested party concerned possessed such knowledge; because, as there is nothing before us to indicate that the Commission was not of this view, we must allow the presumption of regularity to operate in favour of the Commission’s decision in the matter.

For all the above reasons we are not prepared to allow this appeal and it is, consequently, dismissed; but in view of the matter of seniority of the appellant which was, we think, quite legitimately raised as an issue closely related to the determination of

this case, we cannot treat this appeal as frivolous, and, for this reason, we are not prepared to award any costs against the appellant.

*Appeal dismissed. No order as to costs.*

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