

1975
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[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KYRIACOS
TSANGARIS

KYRIACOS TSANGARIS,

Applicant,

v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 236/74).

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- Public Officers—Confidential reports—Preparation and submission—Section 45 of the Public Service Law, 1967 (Law 33 of 1967) and General Orders II/2.1–13 and Appendices A.II/2.5 and 9—Reporting and countersigning authority—Responsibility for delegating of, is in the hands of Heads of Departments—Director of Department of Medical Services delegating to the Medical Superintendent of the Nicosia General Hospital authority of reporting on the staff of the Nicosia General Hospital—Has not acted wrongly in the performance of this duty.* 5
- Administrative Law—Competence—Organ having decisive competence on a matter obtaining opinion concerning matters of its competence or accepting the opinion of another body—Medical Superintendent consulting the superior of officer reported upon, in exercising functions of reporting officer on Staff of Nicosia General Hospital—Not acting contrary to any provision of the Law.* 10 15
- Public Officers—Promotions—Post of Medical Laboratory Technologist—Interested party senior to applicant and better rated in one of the confidential reports—Special reasoning given by respondent in disregarding certain recommendations in favour of applicant though they were not recommendations by a Head of Department in the strict sense of the term—All relevant factors taken into consideration—No misconception of fact—Proper and due inquiry carried out—No failure in the duty to select the best candidate—Sub judice decision a duly reasoned one—And reached in a proper exercise of Administrative discretion—Reasonably open, on the material before the respondent Commission, to decide as it did.* 20 25

Administrative Law—Discretionary powers—Decision of administrative organ—Administrative Court will not interfere with a decision of an administrative organ by substituting its own discretion so long as the decision was reasonably open to it on the material before it even if in exercising its own discretion on the merits it could have reached a different conclusion.

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Public Officers—Seniority—Between officers holding the same office—How determined—Section 46 of the Public Service Law, 1967—Unestablished officers do not hold the same office as officers in the permanent establishment, although they may be in the same grade.

The applicant complains against the validity of the promotion of the interested party to the permanent post of Medical Laboratory Technologist 1st Grade.

At the time of the *sub judice* promotion both the applicant and the interested party were holding the permanent post of Medical Laboratory Technologist 2nd Grade; the applicant with effect from the 1st July, 1969 and the interested party with effect from the 1st January, 1967; applicant has also been holding the said post on an unestablished basis since the 1st July, 1967.

Counsel for the applicant contended:

- (a) That the seniority of the interested party as against the applicant was only six months and not two and a half years, for the reason that the applicant could not be appointed to a permanent post as from 1.1.1967, though holding a post of equal rank, only for purely technical reasons.
- (b) That the confidential report for the interested party in respect of the year 1972 was prepared by and/or in its preparation participated a person who had no authority in that respect.
- (c) That the decision of the respondent Commission was wrong because they relied only on that part of the career of applicant and the interested party which referred to the year 1972 and not on their whole service records.
- (d) That the *sub judice* decision was not duly reasoned and respondent Commission ought to have questioned further the Head of Department regarding his recommendations.

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With regard to contention (b) above the factual position was as follows:

The Head of Department, i.e. the Director of the Department of Medical Services, acting under General Order II/2.8, by letter dated 9th November, 1970, delegated his reporting authority to the Medical Superintendent of the Nicosia General Hospital to report on certain officers including the applicant and the interested party. Thus in the 1972 confidential report, the reporting officer of the interested party was the Medical Superintendent.

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

Indeed the applicant and the interested party should be taken to be performing the same duties, as holders of corresponding posts, but they cannot be taken to be holding the same office. Under section 46 of the Public Service Law, 1967, "seniority between officers holding the same office shall be determined by the effective day of appointment or promotion to the particular office or grade", and it cannot be said that unestablished officers hold the same office as officers on the permanent establishment, although they may both be in the same grade. (See p. 523 of the judgment *post*).

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

(1) I have not been persuaded that the Director of Medical Services has acted wrongly in the performance of the duty of choosing the Medical Superintendent of the Nicosia General Hospital as the officer who would responsibly report on certain officers of the Nicosia General Hospital.

(2) Therefore, the annual confidential report for the year 1972 complained of, was prepared by a competent person duly authorised in that respect. Furthermore, there has been nothing to show that he could not know of the work of the interested party or that he was not in immediate and daily contact with him, as the General Orders demand.

(3) He could usefully report on the work of the interested party by consulting his immediate superior and in fact there was a consensus on the grading between him and such superior officer a practice followed for many years and which is in no way contrary to any known principle of law. And it is not contrary to any provision of the law if any organ having decisive competence on a matter obtains or accepts the opinion of another

body on matters of its competence. (See *Thalassinos v. The Republic* (1973) 3 C.L.R. 386 at p. 392, cited with approval by the Full Bench in *Thalassinos v. Republic* (1974) 3 C.L.R. p. 290).

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

It is apparent from the minutes of the respondent Commission (vide pp. 528–530 of the judgment *post*) that they looked at the whole of the career of the candidates, their service and records, to which they referred explicitly; they only referred to the 1972 report as part of their reasoning for disregarding the letter of the 20th November, 1973 from the Medical Laboratory Superintendent and his staff officers, which they thought proper to submit to the Commission, on their own initiative, shortly before the *sub judice* decision was taken.

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

(1) Looking at the minutes of the meeting of the respondent Commission at which the *sub judice* decision was taken (vide pp. 528–530 of the judgment *post*) it is obvious that the Commission did carry out what should be stated to be a proper and due inquiry in the circumstances and that the decision is duly reasoned and in fact special reasoning is to be found regarding the disregard of the recommendation made by the Medical Laboratory Superintendent and his staff officers, independently of whether that was a recommendation by a Head of the respondent in the strict sense of the word.

(2) What is proper and due inquiry and what amounts to due reasoning, is a question of degree, depending upon the nature of the decision concerned. In the circumstances of this case the *sub judice* decision was reached in a proper exercise of administrative discretion, inasmuch as all relevant factors were taken into consideration and there was no misconception of fact. It was arrived at after a proper and due inquiry and it is duly reasoned and they did not fail in their paramount duty to select the best candidate. It is well established that this Court will not interfere with a decision of an administrative organ by substituting its own discretion, so long as the decision was reasonably open to it on the material before it, even if in exercising its own discretion on the merits, it could have reached a different conclusion.

40 *Application dismissed.*

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Cases referred to:

Thalassinos v. Republic (1973) 3 C.L.R. 386 at p. 392;

Thalassinos v. Republic (1974) 3 C.L.R. 290.

Recourse.

Recourse against the decision of the respondent Public Service Commission to promote the interested party to the post of Medical Laboratory Technologist 1st Grade in preference and instead of the applicant. 5

K. Talarides, for the applicant.

N. Charalambous, Counsel of the Republic, for the respondent. 10

Cur. adv. vult.

The following judgment was delivered by:—

A. LOIZOU, J.: By this recourse the applicant, a Medical Laboratory Technologist 2nd Grade, challenges the validity of the promotion of Phaedros Zographos (hereinafter referred to as “the interested party”), to the permanent post of Medical Laboratory Technologist 1st Grade. 15

The applicant is a graduate of the English School, Nicosia and the School of Public Health Basic Laboratory Technique of the American University of Beirut. He entered the Government Service on the 1st October, 1963 as a student Medical Laboratory Technician, on daily wages, and appointed as Medical Laboratory Technologist, 2nd Grade, unestablished, on the 1st July, 1967, until the 1st July, 1969 when he was permanently appointed to the same post. 20 25

The interested party is a graduate of the Greek Gymnasium of Morphou; he attended the School of Medicine of the Athens University for the years 1960–1962 and graduated from the School of Public Health Basic Laboratory Technique of the American University of Beirut. He entered the Government Service as a student Medical Laboratory Technician on the 2nd October, 1963 and appointed to the post of Medical Laboratory Technologist, 2nd Grade, on the 1st January, 1967, until the 1st January, 1974 when, by the *sub judice* decision, he was promoted to the post of Medical Laboratory Technologist, 1st Grade. 30 35

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5 It has been contended on behalf of the applicant that the seniority of the interested party as against him, was only six months and not two and a half years, for the reason that the applicant could not be appointed to a permanent post as from 1.1.67, though holding practically a post of equal rank, only for purely technical reasons.

10 As it appears from the relevant minutes of the respondent Commission, (Red 24, Exch. 3), there was at the time only one vacancy in the post of Laboratory Technologist, 2nd Grade, which came up for consideration in October, 1966. The filling of the vacancy was deferred for four weeks, in order to enable the Medical Department to obtain authority for the filling of a second vacancy, but as no authority had reached the Commission by the 4th of January, 1967, it decided to fill the one vacancy
15 for which there was authority; after considering the qualifications, merits and experience and the oral recommendation of Mr. Theodoros Ashiotis during the meeting referred to above, as to the abilities and general behaviour of the interested party who was the only officer serving in the lower grade of student
20 Medical Laboratory Technician, appointed him to the said post with effect from 1.1.67.

25 Indeed, in substance, they should be taken to be performing the same duties, as holders of corresponding posts, but it cannot be taken to be holding the same office and under section 46 of the Public Service Law, 1967, "Seniority between officers holding the same office shall be determined by the effective day of appointment or promotion to the particular office or grade", and it cannot be said that unestablished officers hold the same office as officers on the permanent establishment, although
30 they may both be in the same grade. Nevertheless, this factor of performing similar duties on account of serving in the same grade, is one that goes to the merit and the overall picture of a candidate, but cannot change the seniority of officers, as determined by section 46 of the Public Service Law.

35 Relevant to this case are the confidential reports and their preparation. Those of the applicant (*Exhibit 2 "A"*), were all either prepared by Mr. Ashiotis, the Medical Laboratory Superintendent in charge of the Central Medical Laboratory, or had his initials, which means that he was in agreement with
40 their contents. In fact, the grading was done by Mr. Ashiotis, in all reports for the applicant, who is described throughout as very good. In the confidential reports for the years 1967,

1968 and 1970, Mr. Ashiotis signs as the reporting officer and the signature of Dr. Fessas, Medical Superintendent, Nicosia, General Hospital, appears next to that of the reporting officer. For the year 1972, again, Mr. Ashiotis appears as the reporting officer and there are initials which have not been accounted for by whom they were placed. For the years 1969 and 1971, Dr. Fessas signs as reporting officer, but the initials of Mr. Ashiotis appear next to the grading. The Director of the Department of Medical Services is the countersigning officer who, throughout, agrees with the assessment made. For the year 1973, though the countersigning was done in 1974 after the *sub judice* decision was taken, the grading was done again by Mr. Ashiotis, and as reporting officers we have both Mr. Ashiotis and Dr. Economou, the new Medical Superintendent.

For the interested party, (*Exh. 3 "A"*) the confidential report for the year 1964, Dr. Fessas is the reporting officer. For the years 1969 and 1971, again Dr. Fessas is the reporting officer, but the grading was done by Mr. Ashiotis who initialled same. For the years 1966, 1967, 1968 and 1970, Mr. Ashiotis signs as the reporting officer, but next to his signature is that of Dr. Fessas. For the year 1972, Dr. Fessas is the reporting officer and the initials of Dr. Kyamides are found next to the signature of the reporting officer. In all reports, with the exception of this one, the grading of the interested party is the same as that of the applicant, namely, very good. In the 1972 report, he is rated as outstanding and excellent and there is the following observation: "This officer is working in the Histological Department since two years, he is hard working and very conscientious officer. He shows great interest and zeal in performing this kind of work and I dare say that he is of an outstanding ability". The Director of the Department of Medical Services is the countersigning officer in all reports and agrees with the assessment made by the reporting officer.

According to the evidence of Mr. Ashiotis, Dr. Kyamides was in charge of the Histological Section administratively and he was under the Medical Superintendent, and he was supposed to report on the officers in that Section. In fact, he had more opportunities to Judge of the interested party's work in that Section than himself, although the interested party continued being a member of the general staff and participated in the rest of the work and especially in the rotation of the night duties which meant once every ten days. Furthermore, Mr.

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5 Ashiotis stated that he received no delegation from the Director of the Department of Medical Services to be the reporting officer in respect of those in the Histological Section, but from the fact that all the confidential reports were sent to him by the Medical Superintendent, a fact done for the last decade without anybody objecting to that, he was under that impression.

10 Whilst on this point, it may be mentioned that the Central Medical Laboratory was divided into four branches, one of them being the Histological Section and the interested party had been posted there in about the end of 1971. The posting was the result of an interdepartmental meeting (see *Exhibit 9*) on the subject of the adoption of the "Papanicolaou" method of test in the detection of cancer of the vagina, and the posting was necessary, as it is stated in the aforesaid letter addressed by the Director of the Department of Medical Services to the Medical Laboratory Superintendent through the Medical Superintendent, Nicosia General Hospital, so that the interested party would work under Dr. Ian Stewart W.H.O. Consultant to acquire the experience required for further training abroad, if he would finally be considered suitable.

15 The confidential report for the year 1972 has given rise to the main ground of law relied upon on behalf of the applicant, to the effect that it was prepared by and/or in its preparation participated a person who had no authority in that respect.

25 The preparation and submission of confidential reports is governed by section 45 of the Public Service Law, 1967, (Law No. 33/67) and the General Orders, particularly General Order II/2.1-13 and Appendix A.II/2.5 and Appendix A.II/2.9, the validity of which has been preserved by the proviso to section 30 86 (1) of Law 33/67. Under General Order II/2.8, "Heads of minor departments will prepare all confidential reports themselves. Heads of medium and major departments will delegate reporting authority to senior officers who are well acquainted with the duties, performance and conduct of the staff". Under 35 General Order II/2.9, "Confidential reports not prepared by the head of department will be countersigned by him if he knows the officer concerned well enough to have formed an opinion of his capabilities and conduct. If not—the head of department will delegate countersigning authority to a responsible senior 40 officer who knows the officer concerned well enough to perform this function usefully and with competence. If a head of department is the reporting officer there is no need for a countersigning officer's report".

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Appendix A.II/2.9 governs the delegation of reporting and countersigning authority and it reads:

“ 1. Heads of departments are responsible for delegating explicitly to certain officers authority for the preparation and countersigning of confidential reports. 5

2. Only those officers will be asked to submit confidential reports who have acquired over a period of at least six months direct and intimate knowledge of the work and conduct of those on whom they are reporting. They should be in frequent, preferably daily, contact with the staff concerned”. 10

In this case, the head of the department is the Director of Medical Services. Without going back many years, in the annual confidential reports file (*Exh.* 9) there is a letter dated the 9th November, 1970 (blues 15-10), from the Director of the Department of Medical Services to the Medical Superintendent, Nicosia General Hospital which reads as follows: 15

“ I should be grateful if the officers whose names are listed below were asked to complete Section I of the enclosed Form Gen. 90. When this is done you should complete Section II of the Form and return it to this Office for further action. 20

2. Before completing Section II, you are advised to consult Appendix A.II/2.5 to the General Orders.

3. This Confidential Report is in respect of the period 1st January to 31st December, 1970. 25

4. Reports duly completed should be returned to this office as early as possible and in any case not later than the 19th December, 1970”. 30

In that long list of officers there are included the Medical Laboratory Superintendent, Mr. Ashiotis and the Medical Laboratory Technologists 2nd Grade, *i.e.* the applicant and the interested party. 30

Identical letters to the one of the 9th November, 1970 including again the same persons, are to be found in the same file dated the 22nd November, 1971 and 17th November, 1972 (blues 110 and 191 respectively). Appendix A.II/2.5 referred to in the 35

aforsaid letters contains notes for the guidance of reporting and countersigning officers.

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5 Consequently, for the year 1972, and the confidential report for that year on the applicant with which we are concerned in this case, there is delegation of authority from the Head of the Department to the Medical Superintendent Nicosia General Hospital, the authority being, to the effect, that the latter would complete Section II of the form and return it to the office of the Director of the Department of Medical Services for further
10 action. The further action taken by the Head of the Department, Dr. Economopoulos, was to complete Section III of the report as countersigning officer. In the same file, we find delegation of reporting authority given by the Director of the Department of Medical Services to various heads of Sections in the
15 Medical Service, keeping for himself the power of countersigning the confidential reports. The responsibility for delegating, reporting and countersigning authority is in the hands of the Heads of Departments, and as it is stated in Appendix A.II/2.9, "Only those officers will be asked to submit confidential reports
20 who have acquired over a period of at least six months direct and intimate knowledge of the work and conduct of those on whom they are reporting. They should be in frequent, preferably daily, contact with the staff concerned". It appears that in the performance of his duties the Director of the Department of Medical Services for many years has chosen the Medical Superintendent of the Nicosia General Hospital as the officer who would responsibly perform the duty of reporting on the staff of the Nicosia General Hospital which included doctors, staff of the Medical Laboratory, nurses, cleaners, etc.

30 I have not been persuaded that the Director of Medical Services has acted wrongly in the performance of this duty. Therefore, the annual confidential report for the year 1972 complained of, was prepared by a competent person duly authorised in that respect. Furthermore, there has been
35 nothing to show that he could not know of the work of the interested party or that he was not in immediate and daily contact with him, as the General Orders demand. In any event, the Medical Superintendent always consulted the immediate superior of the officer reported upon, and in fact, there
40 was a consensus on the grading between him and such superior officer, a practice followed for many years and which is in no way contrary to any known principle of law. This disposes

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also of an alternative ground of law relied upon by the applicant, and it cannot be said that the Medical Superintendent could not usefully report on the work of the interested party. Regarding the question of an organ having decisive competence and obtaining of opinion concerning matters of its competence or the acceptance by it of the opinion of such other body, is not contrary to any provision of the law. (See *Thalassinos v. The Republic* (1973) 3 C.L.R. 386 at p. 392, cited with approval by the Full Bench in *Thalassinos v. The Republic* (1974) 3 C.L.R. 290).

The next ground of law argued on behalf of the applicant, is that the decision of the Commission was wrong in relying on the only part of the career of the interested party and the applicant, that is, for that part which related to 1972 and not on their whole service records.

Considering the minutes of the respondent Commission, I need not say much, except that it is apparent therefrom that the respondent Commission looked at the whole of the career of the candidates, their service and records, to which they referred explicitly, but they only referred to the 1972 report as part of their reasoning for disregarding the letter of the 20th November, 1973 (encl. 5) from Mr. Ashiotis and his staff officers, which they thought proper to submit to the Commission, on their own initiative, shortly before the *sub judice* decision was taken and which the respondent Commission duly weighed before arriving at the *sub judice* decision. It may also be added that in the aforesaid letter is stated that the factors influencing them in their decision to recommend the applicant as the most suitable person for promotion, were his devotion to duty, reliability, competence in his work, initiative and accuracy in carrying out his duties, which are items also graded in the annual confidential reports.

It remains now to consider the argument advanced on behalf of the applicant that the decision was not duly reasoned and that the respondent Commission ought to have questioned further Mr. Ashiotis regarding his recommendation. The relevant minute (encl. 4) reads as follows:—

“ The Medical Laboratory Superintendent stated that he had convened a meeting under his chairmanship, at which two Senior Medical Laboratory Technologists participated, in order to discuss who was the most suitable candidate

for promotion to the above post. The Medical Laboratory Superintendent added that all the officers, who participated at the above meeting, consider Mr. K. Tsangaris as the best and produced a letter signed by them to this effect. In view of the above, the Medical Laboratory Superintendent recommended Mr. K. Tsangaris for promotion.

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The Ag. Director of the Department of Medical Services stated that the seniority as well as the abilities of all the candidates must be taken into consideration by the Commission in selecting the best candidate.

The Commission observed that Mr. K. Tsangaris was appointed at first on daily wages in the Government Medical Laboratory from 2.10.63 to 26.9.65; from 27.9.65 to 20.8.66 he was on scholarship at the American University of Beirut; from 21.8.66 to 30.6.67 he was again appointed on daily wages in the Government Medical Laboratory; on 1.7.67 he was appointed on an unestablished basis to the post of Medical Laboratory Technologist, 2nd Grade, and served in that capacity until 1.7.69 when he was appointed to the same post on a permanent basis.

The Commission observed also that there was another candidate—namely Phaedros Zographos—who was senior to Mr. K. Tsangaris. Mr. Zographos was appointed to the permanent post of Student Medical Laboratory Technician on 2.10.63; from 26.9.65 to 21.8.66 he was on scholarship at the American University of Beirut; on his return he continued to serve as a Student Medical Laboratory Technician until 1.1.67 when he was promoted to the permanent post of Medical Laboratory Technician, 2nd Grade.

The Commission observed further that all the Annual Confidential Reports in respect of Mr. K. Tsangaris describe him as 'very good'; the Annual Confidential Reports in respect of Mr. Ph. Zographos for the years 1964–1971 describe him as 'very good', whereas the Annual Confidential Report in respect of the year 1972 describes the officer in question as 'excellent' and 'outstanding' and the Reporting Officer made the following observations:

'This officer is working in the Histological department since two years. He is a hardworking and very conscientious'

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tious officer. He shows great interest and zeal in performing this kind of work and I dare say that he is of an outstanding ability'.

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 shown in their Personal Files and in their Annual Confidential Reports, the Commission decided not to follow the recommendation of the Medical Laboratory Superintendent. The Commission accordingly decided that Mr. Phaedros Zographos was on the whole the best and that he be promoted to the permanent post of Medical Laboratory Technologist, 1st Grade w.e.f. 1.1.74".

Looking at the minutes of the meeting of the respondent Commission at which the *sub judice* decision was taken, hereinabove set out, it is obvious that the respondent Commission did carry out what should be stated to be a proper and due inquiry in the circumstances and that the decision is duly reasoned and in fact special reasoning is to be found regarding the disregard of the recommendation made by Mr. Ashiotis and his staff officers, independently of whether that was a recommendation by a Head of the Department in the strict sense of the word. What is proper and due inquiry and what amounts to due reasoning, is a question of degree, depending upon the nature of the decision concerned.

In the circumstances of this case the *sub judice* decision was reached in a proper exercise of administrative discretion, inasmuch as all relevant factors were taken into consideration and there was no misconception of fact. It was arrived at after a proper and due inquiry and it is duly reasoned and they did not fail in their paramount duty to select the best candidate. It is well established that this Court will not interfere with a decision of an administrative organ by substituting its own discretion, so long as the decision was reasonably open to it on the material before it, even if in exercising its own discretion on the merits, it could have reached a different conclusion.

For all the above reasons, this recourse fails and is hereby dismissed with no order as to costs.

Application dismissed.
No order as to costs.