

IN THE MATTER OF ARTICLES 146 AND 192  
OF THE CONSTITUTION

CHARILAOS KITROMELIDES AND OTHERS,

*Applicants,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH

1. THE COUNCIL OF MINISTERS,
2. THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Case No. 8/68).

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CHARILAOS GEO. FRANGOULIDES,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH

1. THE COUNCIL OF MINISTERS,
2. THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Case No. 64/68).

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*Public Officers—Promotions—Annulment by Administrative Court—  
Reconsideration of the matter by Public Service Commission—  
Qualifications of candidates—Material time at which question of  
qualifications should be decided.*

- 5 *Administrative Law—Annulment of Administrative decision relating to  
promotion of public officers—Reconsideration of the matter—  
Qualifications of candidates—Material time at which question of  
qualifications should be decided.*

- 10 *Public Officers—Interview of candidates—The Public Service Commis-  
sion is not bound to call all the candidates for interview, at any  
rate when it can reach a decision on the basis of the material  
before it without an interview.*

The main issues for consideration in these recourses were:  
(a) What was the material time as at which the question of the qualifications of the applicants should be decided and (b) whether the Public Service Commission was bound to call all the candidates for interview.

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The applicants were all qualified for appointment to the post of Senior Welfare Officer under the Schemes of Service as they stood prior to their amendment. In fact the applicants in case 8/68 were appointed to the said post and their appointment was annulled on the application of the applicant in Case 64/68. After the said annulment the schemes of service were amended by incorporating in the scheme a requirement of "a certificate or diploma of a University or other equivalent educational institute". As a result of this amendment none of the applicants qualified under the scheme of service when the *sub judice* appointments were made.

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Counsel for the applicants argued that it was irrelevant if they did not qualify under the scheme of service as amended, because they did qualify under the scheme in force at the time of annulment of their previous appointment on the application of applicant in Case 64/68 and that was the material time as at which the question of qualifications should be decided.

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

The material time as at which the question of qualification should be decided is the time of annulment of the previous appointment. This ground of complaint is, therefore, a valid one, and since the subject appointments were based on the view that the applicants did not qualify under the new scheme of service it follows that here the applicants must succeed.

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

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There is authority to the effect that the Commission is not bound to call all the candidates for interview, at any rate where it can reach a decision on the basis of the material before it without an interview; and as no reason has been shown for supposing that interviewing the applicants would have made a difference in the case of any of them this point fails.

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*Sub judice appointments annulled.*

**Recourse.**

Recourse against the decision of the Public Service Commission to promote the interested parties to the post of Senior Welfare Officer in preference and instead of the applicants.

5 *P. Theodorou for A. Triantafyllides*, for the applicant in Case No. 8/68.

*D. Papachrysostomou*, for the applicant in case No. 64/68.

*S. Matsas*, for the respondents.

*Cur. adv. vult.*

10 The following judgment was delivered by:—

STAVRINIDES, J.: These applications arose out of the promotion of two Welfare Officers to the post of Senior Welfare Officer. The grounds on which they are based being substantially the same, they were heard together.

15 When the Public Service Commission first met to consider the filling of the vacancies a question arose as to the meaning of the scheme of service then in force and it deferred making any appointment pending clarification of the scheme by the Council of Ministers. Accordingly a request in that behalf was made  
20 to the Council, which amended the scheme, thus removing the difficulty. After the amendment, a doubt arose as to another part of the scheme, and this also was referred to the Council of Ministers for clarification, with the result that again the scheme was amended. Thus a requirement of “a certificate or  
25 diploma of a university or other equivalent educational institution” was incorporated in the scheme.

After these amendments the Commission promoted to the subject posts Mr. Christophoros Michael and Mr. Christakis Konis, and the applicants complain that the later amendment  
30 is *null* and *void*; that so is the decision to promote those officers; that “the decision” of the Commission that the applicants did not qualify under the scheme as amended is *null* and *void*; and that its action in not calling them for interview also avoided the subject appointments.

35 The grounds on which the applications are based are to the effect that the amendment of the scheme whereby the requirement of “a certificate or diploma of a university” etc. was introduced is *null* and *void*; that that amendment was made in

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abuse of power because the qualifications stipulated thereby are unnecessary; that in any case that amendment was inapplicable in so far as the filling of the subject posts was concerned because it was not in force at the time when the appointment of the applicants in application 8/68 was annulled in proceedings by one of the present applicants, viz. the applicant in case 64/68; and that the Commission had a duty to interview the applicants as well as other candidates. 5

To begin with this last point, there is authority to the effect that the Commission is not bound to call all the candidates for interview, at any rate where it can reach a decision on the basis of material before it without an interview; and as no reason has been shown for supposing that interviewing the applicants would have made a difference in the case of any of them this point fails. 10 15

With regard to the claim that the decision of the Commission to the effect that the applicants did not qualify under the scheme of service as it stood at the time of the subject appointments is *null* and *void*, this turns on construction and, quite apart from the fact that the Commission has considerable latitude in such a matter, it is quite clear that none of the applicants qualified under the scheme as it then stood. 20

I now come to the claim for a declaration that the decision of the Council of Ministers to amend the scheme of service by introducing a requirement of "a certificate or diploma" etc. is *null* and *void* on the grounds already stated. It is quite clear that the Council has the power to amend a scheme of service at any time, and it is not within the province of this Court to decide on the desirability, or even the reasonableness, of any particular requirement as distinct from one that is clearly irrelevant, which is not the case with the requirement here in question. 25 30

As I said earlier, the applicants did not qualify under the scheme of service as last amended. It has been argued on their behalf that if they did not so qualify that is irrelevant because they did qualify under the scheme in force at the time of annulment of their previous appointment which was set aside on the application of applicant in Case 64/68 and that that is the material time as at which the question of qualification should be decided. In support of this proposition counsel for them referred to decisions of the Greek Council of State. In answer 35 40

to that argument counsel for the respondent submitted that those decisions relate only to cases where the matter previously complained of was an omission to do an act or take a decision *required by law*.

- 5 Having considered the cases cited by counsel for the applicants I see no reason for accepting this latter submission. Nor has counsel for the respondent cited any case bearing this out. In my view therefore this ground of complaint is a valid one, and since the subject appointments were based on the view that  
10 the applicants did not qualify under the new scheme of service it follows that here the applicants must succeed.

Since for the reasons stated the subject appointments must be annulled it is not necessary to go into any of the other matters raised in the proceedings.

- 15 The subject appointments are hereby annulled. The respondent to pay £30 costs in respect of each application.

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

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