

1976  
Dec. 16  
—  
KLEANTHIS  
C. KYPRIS  
v.  
REPUBLIC  
(PUBLIC  
SERVICE  
COMMISSION)

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KLEANTHIS C. KYPRIS

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

Respondent.

( Case No. 332/74).

*Public Officers—Appointments and promotions—Schemes of service—  
Candidate not called for interview because he did not pass an  
examination required thereunder—Holding post whose scheme  
also requires passing of said examination but appointed thereto  
by virtue of an exemption from passing them—Fact that he was  
so appointed cannot be considered as having passed the said  
examinations once the scheme of service for the new post calls  
for them and he lacks the qualifications provided in the exemption  
from passing them.*

5

The applicant was on the 1st February, 1967 appointed to the post of Preventive man in the Preventive Service of the Customs and Excise Department. This post became redundant on the 23rd January, 1968. Though applicant has not passed the Government Clerical and Other Services Qualifying Examination he was on the 1st May, 1969 appointed on an unestablished basis to the permanent post of Clerical Assistant. This appointment became possible by virtue of a decision of the Council of Ministers to the effect that the redundant personnel of the Customs and Excise Department were exempted from the obligation of passing this examination.

10

15

20

Applicant was later emplaced on the permanent establishment on probation until the 30th April, 1970 and on the expiration of his probationary period he was confirmed to the permanent post of Clerical Assistant and continued to serve in the Department of Customs and Excise. As from the 17th May, 1971 he was transferred to the District Lands Office, Kyrenia.

25

When the applicant applied for appointment to the vacant

5 post of Land Clerical Assistant he was not included in the list of candidates to be called for interview on the ground that he did not possess all the qualifications required by the relevant scheme of service\*, in that he had not passed the above Government examinations, and because he had ceased being a redundant personnel of the Customs and Excise Department.

Hence the present recourse.

10 The passing of the said examination was a requirement of the relevant scheme of service but under a proviso thereto there were exempted from the said examination (a) "the redundant personnel of the Customs Department" and (b) "Daily paid Public Officers who are in the Public Service and had completed three years service at any time prior to and until the 21st January, 1970 to the post at which they apply for appointment, irrespective of whether such service is continuous or interrupted".

20 Counsel for the applicant mainly contended that as the applicant had been holding in a confirmed way the permanent post of Clerical Assistant, General Clerical Staff and was performing the duties of Land Clerical Assistant he should have been taken as possessing the relevant qualifications, or alternatively, as being exempted from the requirement of passing the said examinations.

25 *Held*, that for a candidate to come within exemption (b) of the proviso he should be in the Public Service as a daily paid Officer, which the applicant was not, at the time being a Clerical Assistant, and in addition he should be one who has completed three years of service at any time prior to and until the 21st January, 1970 to the post to which he was applying for appointment; that even if the applicant's service as a permanent Clerical Assistant were to be equated to that of a daily paid public officer and that even if his service at the District Lands Office were to be considered as being the same as the service in the post to which he was applying for appointment, he does not come within the exemption under para. (b) of the proviso because he had not up to the 21st January, 1970 served for three years to the post to which he was applying for appointment.

(2) That the fact that the applicant was appointed to a post

\* Quoted at pp. 399-400 *post*.

1976  
Dec. 16

KLEANTHIS  
C. KYPRIS  
v.  
REPUBLIC  
(PUBLIC  
SERVICE  
COMMISSION)

by virtue of an exemption from passing the said examination, cannot be considered as having passed the examinations, once the scheme of service for the new post calls for it and he lacks the qualification provided in the exemption, namely, the three years service to the post he was applying for appointment; and that, accordingly, the recourse will be dismissed. 5

*Application dismissed.*

Cases referred to:

*Arsalis v. The Republic* (reported in this Part at p. 255 *ante*).

**Recourse.**

Recourse against the decision of the respondent Public Service Commission not to call the applicant for an interview for the post of Land Clerical Assistant at the Department of Lands and Surveys because he did not possess all the qualifications required under the relevant schemes of service. 15

*S. Spyridakis*, for the applicant.

*C. Kypridemos*, Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

The following judgment was delivered by:— 20

A. LOIZOU, J.: By the present recourse the applicant seeks a declaration from the Court that the decision of the respondent Commission not to call him for an interview for the post of Assistant Lands Clerk at the Department of Lands and Surveys because he did not possess all the required under the scheme of service qualifications, namely, he had not passed the Government Examinations, a qualification necessary for eligibility to the said post is null and void. 25

The applicant on the 1st February, 1967, was first appointed in the Public Service to the temporary post of Preventive man in the Preventive Service of Customs and Excise. On the 23rd January, 1968 he was informed that the said post became redundant and by virtue of a decision of the Council of Ministers dated the 7th December, 1967 to the effect that the redundant personnel of the Department of Customs and Excise were exempted from the obligation to succeed in the Government Clerical and Other Services Qualifying Examinations though he had not passed these examinations, was, on the 1st May, 1969 appointed, on an unestablished basis, to the per- 35

manent post of Clerical Assistant and on the 13th June, 1969  
emplaced on the permanent establishment with effect from the  
1st March, 1969 on probation, until the 30th April, 1970. On  
the expiration of this probationary period, he was confirmed to  
5 the permanent post of Clerical Assistant and continued to serve  
in the Department of Customs and Excise.

As from the 17th May, 1971, he was transferred to the Dis-  
trict Lands Office, Kyrenia. As a result of a decision of the  
Minister of Finance approving the filling of 30 vacancies in the  
10 post of Land Clerical Assistant in the Department of Lands and  
Surveys, a first entry post, applications were invited by Noti-  
fication No. 127, published in the official Gazette of the 24th  
January, 1974. The qualifications required for this post, as  
set out in the said Notification, were:

- 15 “ (a) Leaving certificate from a six-year secondary school,  
good knowledge of Greek (for Greek candidates) or  
Turkish (for Turkish candidates) and English; good  
knowledge of Mathematics.
- 20 (b) Candidates who are not holders of a University degree  
or of a School of Higher Education should have passed  
the Government Clerical and Other Services Quali-  
fying Examination.
- .....

Provided that the following will be exempted from the said  
examination:

- 25 (a) The redundant personnel of the Customs Department;  
and
- (b) Daily paid Public officers who are in the Public Service  
who had completed three years service at any time  
30 prior to and until the 21st January, 1970 to the post at  
which they apply for appointment, irrespective of whe-  
ther such service is continuous or interrupted.

Service on an hourly basis is taken into account for this  
purpose.

35 Daily paid officers who had been appointed in the Public  
Service prior to the 21st January, 1967, and have served in  
the National Guard after their appointment are exempted  
from the said Government examination on completing 3

1976  
Dec. 16

—  
KLEANTHIS  
C. KYPRIS  
v.  
REPUBLIC  
(PUBLIC  
SERVICE  
COMMISSION)

years' service at any time prior to and until the 21st January, 1970. Military Service in the National Guard will be taken into account for completing the said three years' service.

Candidates referred to in para. (b) have to attach to their application a declaration duly certified by their Head of Department, that they have completed three years' service to this post.

5

.....”

The applicant duly applied for appointment to this post and on being informed that he had not been included in the list of candidates to be called for interview, he did by his letter of the 28th March, 1974 (Appendix 6 attached to the opposition) request the respondent Commission to reconsider his application, in view of the fact that he was “redundant personnel of the Customs Department, performing since three years the duties of Land Clerical Assistant at the Lands and Surveys Department, Kyrenia. On the basis of the relevant publication the redundand personnel of the Customs Department is exempted from the Government Clerical and Other Services Qualifying Examination”.

10

15

By letter dated 19th April, 1974 (Appendix 7 attached to the opposition) the respondent Commission rejected same, on the ground that the applicant did not possess all the qualifications required by the relevant Scheme of Service that is he had not passed the said examinations, and that he had ceased being a redundand personnel of the Customs Department ever since his appointment to the post of Clerical Assistant General Clerical Staff.

20

25

The applicant thereupon filed the present recourse.

The main submission of counsel for the applicant is that having regard to the facts of this case, the issue before the Court was that once the applicant had been holding in a confirmed way the permanent post of Clerical Assistant, G.C.S. and he did perform the duties of Land Clerical Assistant, he should have been taken for the purpose of implementing and enforcing the relevant regulations and the scheme of service, as possessing, or alternatively, as being exempted from the requirement of having passed the Government Examinations. This was based on logic and common sense and there was strong foundation for the proposition that if a public officer has been appointed and is

30

35

holding permanently the post of clerk in the General Clerical Staff, as in the case of the applicant in the present recourse, then he fulfils the requirements of the scheme of service as to the qualification of the Government Examinations and consequently, he should be considered by the respondent Commission as eligible for appointment.

Counsel for the respondent Commission has submitted, *inter alia*, that the applicant at the material time did not possess one of the qualifications required by the relevant scheme, namely, he had not passed the Government Clerical and Other Services Qualifying Examination, and further, he did not come within the two categories of candidates who were exempted from the above requirements, because, at the time of applying, he was neither redundant personnel of the Customs and Excise Department, nor serving on a daily wages basis. The permanent post which he was holding at the time, did not credit him with the said examination, because his appointment to that post was effected by a special exemption.

It is an undisputed fact that the applicant has not passed the examinations in question, as required by para. 3(b) of the scheme of service. The question, therefore, that falls for determination, is whether he comes within the two exemptions set out in the proviso to the scheme.

He was at the time, definitely, not a redundant personnel of the Customs Department, because he ceased to be so following his appointment to the post of Clerical Assistant, nor could he take advantage of the exemption envisaged by para. (b) of the proviso, as, for a candidate to come within this exemption, one should be in the Public Service as a daily paid officer, which the applicant was not, at the time being a permanent Clerical Assistant and in addition, one who has completed three years of service at any time prior to and until the 21st January, 1970 to the post to which he was applying for appointment. But even if the applicant's service as a permanent Clerical Assistant were to be equated to that of a daily paid public officer and even if his service at the District Lands Office were to be considered as being the same as the service in the post to which he was applying for appointment, again he does not come within the exemption under para. (b) of the proviso, because he had not up to the 21st January, 1970 served for three years to the post to which he was applying for appointment. In fact, he had not served for

1976  
Dec. 16

KLEANTHIS  
C. KYPRIS  
v.  
REPUBLIC  
(PUBLIC  
SERVICE  
COMMISSION)

three years, even after the 21st January, 1970, for, he was posted at the D.L.O. on 4.5.1971 and the *sub judice* decision was taken on 19th April, 1974.

Further, in order to counterbalance the non passing of the examinations in question, the administration required those candidates to possess three years of experience to the same post, with the further limitation that the service during these three years must have been completed by the 21st January, 1970. The fact that the applicant was appointed to a post by virtue of an exemption from passing the examinations, cannot be considered as having passed the examinations, once the scheme of service for the new post calls for it and he lacks the qualification provided in the exemption, namely, the three years' service to the post he was applying for appointment.

Counsel for the applicant referred to an advice given by the Attorney-General in Case No. 305/71, judgment in which has since then been delivered and is reported as *Arsalis v. The Republic* (reported in this Part at p. 255 *ante*) but which carries the case for the applicant no further, as it turned on somehow different circumstances.

For all the above reasons, the present recourse is dismissed, but in the circumstances I make no order as to costs.

*Application dismissed. No order as to costs.*