

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NIKI IOANNOU,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

NIKI  
IOANNOU  
v.  
REPUBLIC  
(PUBLIC  
SERVICE  
COMMISSION)

(Case No. 2/75).

Public Officers—Promotions—Seniority—Applicant senior to 6 interested parties—And with equal if not better confidential reports than 3 of them—All interested parties recommended for promotion by Head of Department—Applicant not so recommended—  
 5 Unlike the case of the remaining officers, where the recommendation is consistent with the Administrative reports, to which the Commission referred, and to the other facts which it took into account, this is not so in the case of the said 3 interested parties—  
 10 As no specific views of the Head of Department appear in the Commission's minutes, which could be treated as justifying the course of overlooking applicant's seniority over the said 3 interested parties and the very good reports on her—Reasoning of the sub judge decision inadequate as far as they are concerned—  
 15 Partellides v. Republic (1969) 3 C.L.R. 480 followed—But distinguished as far as the remaining officers are concerned.

Administrative Law—Administrative decision—Reasoning—Adequacy of.

Public Officers—Promotions—Qualifications—Higher Qualifications—Weight—Confidential reports—And reports from different  
 20 reporting officers—Use of—Factors to be taken into consideration in determining the merits of public officers for promotion.

Head of Department—Recommendations—Not consistent with the confidential reports—See, also under "Public Officers".

25 The applicant in this recourse challenged the validity of the decision of the respondent Public Service Commission by means of which 14 officers were promoted to the post of Clerk 2nd

Grade, General Clerical Staff, in preference and instead of herself.

In making the *sub judice* promotions the Public Service Commission\* took into consideration all the facts appertaining to each one of the officers serving in the post of Clerical Assistant and gave proper weight to their merits, qualifications, seniority, service and experience, as well as to their suitability for promotion to the above post, as shown in their personal files and in their annual confidential reports. The Commission, further, took into consideration the recommendations of the Head of Department who stated that he considered the interested parties as the best candidates and recommended them for promotion.

The applicant was not recommended for promotion by the Head of Department.

The applicant was junior to interested parties Nos. 1, 2, 4, 5, 7, 8, 9 and 10; but she was senior to interested party No. 3 by ten months, to interested party No. 6 by 19 months, to interested party No. 11 by about a year and to interested parties Nos. 12, 13 and 14, by at least 4 years.

The applicant possessed somehow higher qualifications than most of the interested parties.

With regard to merit, interested parties Nos. 1, 2, 4, 5, 7, 8, 9 and 10, were, having regard to their confidential reports, better than the applicant; and interested parties Nos. 12, 13 and 14 had, on the whole, better reports than her. On the other hand applicant had equal, if not better, confidential reports than interested parties Nos. 3, 6 and 11.

*Held*, (1) that though applicant possesses somehow higher qualifications than most of the interested parties, all interested parties possess all the qualifications required for the post in question; and that higher qualifications should not weigh so greatly with the mind of the Commission but they should decide in selecting the best candidate on the totality of all the circumstances before them (see *Bagdages v. Central Bank of Cyprus* (1973) 3 C.L.R. 417 at p. 427).

(2) (After referring to the principles governing the use of confidential reports and to the factors to be taken into consideration in determining the merits of public officers for promotion—vide pp. 437–438 *post*). That the merit of interested parties Nos. 1, 2, 4, 5,

\* See the relevant minutes at p. 434–435 *post*.

7, 8, 9 and 10 is better than that of the applicant and they are senior to her; that interested parties Nos. 12, 13 and 14 have, on the whole, better reports than the applicant; that though these interested parties are junior to the applicant, their promotion should be considered in the light also, of the recommendation of the Head of the Department, which, in their case, is supported by the contents of the annual confidential reports; and that though no reasons are given by the Head of Department their case is distinguishable from that of *Partellides v. The Republic* (1969) 3 C.L.R. 480, where there had not been recorded in the Commissions's minutes, any specific views of the Head of Department concerned which could be treated as justifying the course of overlooking the seniority of the applicant in that case (vide *Antonίου v. The Republic* (1975) 3 C.L.R. 510 at pp. 515-516).

(3) That the applicant has got equal if not better confidential reports than interested parties Nos. 3, 6, and 11; that as these reports emanate from different reporting officers they could only be regarded as constituting part of the overall picture of the merits of each candidate which the Commission had to weigh as a whole (see *Georghiou v. The Republic* (1975) 3 C.L.R. p. 156 at p. 159 and *Evangelou v. The Republic* (1965) 3 C.L.R. p. 292 at p. 297); that unlike the case of the remaining officers where the recommendation of the Head of the Department is consistent with the administrative reports to which they had referred and to the other facts which they took into account, in the case of these three officers this is not so; that even if their reports were equal, the situation would not have changed; that there does not appear to have been recorded in the Commission's minutes, any specific views of the Head of the Department concerned which could be treated as justifying the course of overlooking the seniority of the applicant and the very good reports on her in this case, nor the recommendation of the Head of Department (the Director of Personnel) is supported, on the face of it, by the contents of the relevant annual confidential reports, a situation that makes the reasoning of the *sub judice* decision inadequate (see *Partellides (supra)* at p. 484); and that, accordingly, the recourse will succeed as the promotion of these three interested parties (Nos. 3, 6 and 11) is concerned and will be dismissed in so far as it relates to the promotion of the remaining interested parties.

*Promotion of interested parties  
Nos. 3, 6 and 11 annulled.  
Otherwise recourse dismissed.*

Cases referred to:

*Georgiades and Another v. Republic* (1975) 3 C.L.R. 143 at pp. 150, 151, 152;

*Lardis v. Republic* (1967) 3 C.L.R. 64 at p. 71;

*Partellides v. Republic* (1969) 3 C.L.R. 480 at p. 484;

*Bagdades v. Central Bank of Cyprus* (1973) 3 C.L.R. 417 at p. 427;

*HjiGregoriou v. Republic* (1975) 3 C.L.R. 477 at p. 483;

*Antoniou v. The Republic* (1975) 3 C.L.R. 510 at pp. 515–516;

*Georgioui v. The Republic* (1975) 3 C.L.R. 156 at p. 159;

*Evangelou v. The Republic* (1965) 3 C.L.R. 292 at p. 297.

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**Recourse.**

Recourse against the decision of the respondent to promote the interested parties to the post of Clerk 2nd Grade in the General Clerical Staff in preference and instead of the applicant.

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*P. Theodorou*, for the applicant.

*R. Gavrielides*, Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

The following judgment was delivered by:—

A. LOIZOU, J.: By the present recourse the applicant seeks the annulment of the decision of the respondent Commission by which 14 officers were promoted to the post of Clerk 2nd Grade in the General Clerical Staff in preference to and instead of herself.

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Under the relevant scheme of service this post is a promotion one from the immediately lower post of Clerical Assistant. Eligible were officers who had a minimum of six years service in the post of Clerical Assistant, of which two in an unestablished capacity and had passed the Exams in General Orders or Financial Instructions and Store Regulations.

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The minute of the respondent Commission of the meeting of the 13th May, 1974 at which the *sub judice* decision was taken, reads as follows:

“ The Director of the Department of Personnel stated that he considered Renos Miltiadou, Jenny Xinari, Androulla Demetriadou, Niki Ch. Demetriou, Eftychia Nicolaou, Melani Ph. Topharou, Ioanna Skordi, Despina Mammidou, Maroulla Stavradi, Thalia Vasiliou Tofa, Praxitelis Tylliros,

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Pavlos Christophi, Christodoulos Iosif and Andreas Petrou as the best candidates and recommended them for promotion.

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5 With regard to Mrs. Maroulla Karoulla, who was one of the most senior candidates, the Director of the Department of Personnel stated that the officer in question had served in various Departments during the last few years; although her Annual Confidential Reports assessed her as 'very good', yet the Heads of various Departments, under whom Mrs. Karoulla had served during the last few years, informed him that her work had not been very satisfactory and had to request for her transfer.

15 After taking into consideration all the facts appertaining to each one of the officers serving in the post of Clerical Assistant, and after giving proper weight to their merits, qualifications, seniority, service and experience, as well as to their suitability for promotion to the above post, as shown in their Personal Files and in their Annual Confidential Reports, and, having regard to the recommendations made by the Director of the Department of Personnel, the Commission came to the conclusion that the following candidates were on the whole the best. The Commission accordingly decided that the candidates be promoted to the permanent post of Clerk, 2nd Grade w.e.f. 1.6.1974.

25 1. Renos Miltiadou, 2. Jenny Xinari, 3. Androulla Demetriadou, 4. Niki Ch. Demetriou, 5. Eftychia Nicolaou, 6. Melani Ph. Topharou, 7. Ioanna Skordi, 8. Despina Mammidou, 9. Maroulla Stavradi, 10. Thalia Vasiliou Tofa, 11. Praxitelis Tylliros, 12. Pavlos Christophi, 13. Christodoulos Iosif, 14. Andreas Petrou".

The grounds of law relied upon on behalf of the applicant are,

35 (a) that having regard to the totality of circumstances and especially the superiority, seniority, experience, merit and qualifications of the applicant vis-a-vis the interested parties, the said decision was taken in excess and/or abuse of power, and

40 (b) that the *sub judice* decision is not duly reasoned, particularly so, as no explanation can be found as to why the applicant was not promoted, in view of her merits,

qualifications and abilities as appearing in her confidential reports and the material in the file in general.

The applicant was first appointed in the Government Service in 1957 as an Assistant School Clerk and served in this capacity until the 14th August, 1963 when she was appointed to the post of clerical assistant unestablished and as from 1st April, 1965 she became established to the same post. 5

At some stage it was claimed that the applicant was senior to all the interested parties because she was alleged to have acquired an established status as Assistant School Clerk in 1957 and not in 1965 as referred to in the bundle of documents attached to the Opposition (encl. 5, of *exhibit* 1). This contention was withdrawn and seniority was claimed by the applicant as against eleven of the fourteen interested parties, namely, interested parties 1, 3, 4, 6, 7, 9, 10, 11, 12, 13 and 14. Seniority of interested parties No. 2, Jenny Xinary, No. 5, Eftychia Nicolaou, No. 8, Despina Mammidou, is not contested. 10 15

Seniority in this case has to be determined in the light of the provisions of section 46 of the Public Service Law, 1967 (Law No. 33/67), the material date being, in the first place, the effective date of appointment or promotion to the particular office or grade held, namely, in the case of the applicant, the 1st April, 1965 when she became established to the same post. With regard, however, to the case of simultaneous appointment or promotion to that post, seniority will have to be determined under sub-section (2) of section 46 according to the officer's previous seniority. 20 25

In view of the aforesaid and on a perusal of the material in the personal files as set out also in the comparative table (encl. 5 of *exh.* 1), interested party No. 1 Renos Miltiadous is also senior to the applicant by two years and three months. Applicant, however, is by ten months senior to interested party No. 3 Androulla Demetriou, by 19 months to interested party No. 6 Melani Tofarou and by at least four years senior to interested parties No. 12, Pavlos Christophi, No. 13 Christodoulos Iosif and No. 14, Andreas Petrou. 30 35

On the other hand, the applicant and interested parties No. 4 Niki Demetriou, No. 7 Ioanna Skordi, No. 9 Maroulla Stavradi, No. 10 Thalia Tofa and No. 11 Praxitelis Tylliros, were simultaneously appointed, namely, the 1st April, 1965, to the 40

post of Clerical Assistant (established) and so, under section 46(2), seniority has to be determined according to their previous seniority, which, in the circumstances makes the applicant only senior by about a year to interested party No. 11 Praxitelis Tylliros, but she is junior to the remaining four.

10 The position of seniority being so and having been repeatedly held that "seniority is not a decisive factor that governs promotions but one that should be duly taken into consideration and should only prevail if all other things were equal", (*Georghiades and another v. The Republic* (1975) 3 C.L.R. 143, at pp. 151-152, following *Lardis v. The Republic* (1967) 3 C.L.R. p. 64 at p. 71 and also *Partellides v. The Republic* (1969) 3 C.L.R. p. 480 at p. 484), its significance, therefore, as hereinabove set out, calls further for consideration of whether all other things are equal and in that respect, the qualifications and merit as well as the recommendations of the Head of the Department have to be examined.

20 The applicant, admittedly, possesses somehow higher qualifications than most of the interested parties, as it appears from encl. 5 of *exh. 1*, but all the interested parties possess all the qualifications required for the post in question, and as stated by Hadjianastassiou, J. in the case of *Bagdades v. Central Bank of Cyprus* (1973) 3 C.L.R. 417 at p. 427, "that reason alone (higher qualifications) should not weigh so greatly in the mind of the Committee but they should decide in selecting the best candidate on the totality of all circumstances before them".

30 With regard to merit, one has to refer extensively to the confidential reports of the candidates "and especially at the most recent ones, in order to evaluate the performance of the candidates during their careers as a whole". (*Hji Gregoriou v. The Republic* (1975) 3 C.L.R. 477 at p. 483).

35 This, however, I take it as referring to the use of confidential reports and not as departing from the principle that in determining the merits of civil servants, whether for the purpose of secondment on merit or promotion, the whole career of a candidate has to be examined and all the factors referring to the quality, ability and merits of a candidate, as a civil servant and not those of a certain period or of a certain category have to be taken into consideration. (See *Georghiades and Another v. The Republic* (1975) 3 C.L.R. 143 at p. 151 and Conclusions from the Case Law of the Greek Council of State (1929-1959) p. 355). No doubt, the

most recent confidential reports depict the up-to-date situation of the candidates.

Having considered the position in the light of the confidential reports, I have come to the conclusion that the merit of interested parties No. 1, Renos Miltiadou, No. 2 Jenny Xinari, No. 4 Niki Chr. Demetriou, No. 5 Eftychia Nicolaou, No. 7 Ioanna Skordi, No. 8 Despina Mammidou, No. 9 Maroulla Stavradi and No. 10 Thalia Vasiliou Tofa, is better than that of the applicant and they are, as already indicated, senior to her. Furthermore, interested parties No. 12 Pavlos Christophi, No. 13 Christodoulos Iosif and No. 14 Andreas Petrou, have, on the whole, better reports than the applicant. But although these interested parties are junior to the applicant, their promotion should be considered in the light, also, of the recommendation of the Head of the Department, which, in their case, is supported by the contents of the annual confidential reports and though no reasons are given by him, their 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 overlooking the seniority of the applicant in that case. (Vide *Antoniou v. The Republic* (1975) 3 C.L.R. 510 at pp. 515-516).

It remains, therefore, to consider the position in respect of interested parties No. 3 Androulla Demetriadou, No. 6 Melani Ph. Tofarou and No. 11 Praxitelis Tylliros who are junior to the applicant, the first two having been appointed to the permanent post of Clerical Assistant, General Clerical Staff on 1.2.1968 and 1.11.1966, respectively, as against the appointment of the applicant on 1.4.1965 and the third one who was appointed to the same post on 1.4.1965, the same date as the applicant, but he was first appointed in the Government Service as an unestablished Clerical Assistant on 10.8.1964, which makes him also junior to the applicant by virtue of section 46(2) of the Law, and for that purpose, a more detailed presentation of their confidential reports, is necessary.

In all, three special confidential reports have been submitted in respect of the applicant, covering, as stated therein, the periods May, 1966—May, 1967, April, 1967 to January, 1968 and December, 1967 to December, 1968. In all three reports the applicant is rated as excellent and very good. In the first one, the reporting officer remarks, "This officer has been working

in the Department carrying out work of diversity and responsibility. She has done this without complaining and in a very effective manner”, and he recommends that she should be promoted. The countersigning officer states, “I have had no  
5 occasion to observe closely the work of this officer and although she may be a competent and intelligent officer, I think that the grading overleaf is too generous”. In the second one, the same officer states: “This officer has been doing work of a much higher grade and very diversified .....”. And concludes,  
10 “This officer must be promoted to Clerk 2nd Grade, because her contribution to the running of the office is very valuable and helpful”. The countersigning officer says: “This officer is efficient and industrious but while a high marking may be justified, I am not convinced that the submission of a special  
15 confidential report is warranted”. In the last report the reporting officer observes: “This officer for the qualifications and experience she has is under-used and her effectiveness and knowledge can be better utilised in higher posts”. And the countersigning officer observes: “I think that the grading  
20 overleaf is rather too generous”.

In the report for the year 1969 the applicant is described as “very good” in four ratable items, “very thorough” in one item; “excellent” with regard to competence in present work,  
25 “satisfactory” in another and her general intelligence is described as “very high”, and he observes that she is qualified to handle and carry out duties bigger than the post she is holding. She is rather difficult in co-operating with her colleagues, but this is due rather to the feeling of doing work lower to her capabilities. The countersigning officer agrees with the assessment.

30 In the report for the year 1970 she is described as “very good” in six ratable items, her competence is described as “very high” “very reliable” in another item, “satisfactory” in another and her ability to co-operate with colleagues is “good”. The reporting officer observes that she is a very competent officer  
35 undertaking successfully duties beyond her post, as Clerical Assistant 3rd Grade and suggested to be promoted to a higher grade. The countersigning officer agreed with that assessment.

No report appears to have been filed for the year 1971, and in  
40 the report for 1972, no assessment is made, because she had just been transferred to the District Officer’s office and the reporting officer observes that during the short time she had been

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in that office she had done good work, she is anxious to be promoted either in the Clerical Staff or in another post, but he had not known her long enough so as to be able to express a considered opinion about her ability.

Interested party No. 3, Androulla Demetriadou, is described in the report for the period between 1.7.1966 to 30.6.1967, as “outstanding” on all ratable items and the countersigning officer agrees with it. For the remaining of 1967, under a different Head of Department, she is described as “very good indeed” on all ratable items and “excellent” in ability to co-operate with colleagues. All the remaining confidential reports emanate from the same officer and she is rated as “very good indeed” and as “excellent” in reliability and thoroughness. In the 1968—1969 report she is described as “quite reliable” or “very reliable” and in the remaining reports up to 1972 she is described as “very good” on all ratable items.

For the year 1973 a special confidential report is made, on the 15th February, 1974 by the same reporting officer and the reasons for submitting same are the following: “Due to her satisfactory, all round performance, due to the fact that she has been in the Government Service for 13 years—come next March—and also due to the fact that she was promised by you—Please see your letter Ref. P 10090 dated 10.7.73, that her promotion would be considered when vacancies occur”. The general assessment of the officer is given as very reliable, accurate, adaptable, satisfactory, very good, etc. and in addition to the above assessment it is observed that she is a very self-respecting lady, reliable, neat, well behaved, very devoted and steady, hard working official at all times and recommended for promotion.

Interested party No. 6 Melani Tofarou is reported as “good” in the 1965–1967 report, “very good” and “good” in the 1967–1968 report with the countersigning officer describing her as “hard working” and “accurate”, “very good” on almost all ratable items. In the 1969 report there is the observation by the reporting officer that she is hard working and accurate, performing her duties in a very satisfactory way, “very good” in the reports of 1970, 1971 and 1972, with the observations in 1971 that she is fast, reliable and very good employee and the reporting officer is satisfied with this employee, and that she is quite good employee as observations and for 1973 she is

described as "very good" on all ratable items and there is the observation that she is quite good employee.

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Interested party No. 11 Praxitelis Tylliros is described for the period 1.6.1967 to 31.12.67 as an efficient, hard working and capable officer who had considerably improved during the period under review and keen in learning and as very good and excellent on all ratable items. For the year 1968 he is described as "very good" with two items regarding initiative and devotion to duty as "good" and of average general intelligence. And the same report is repeated for 1969, 1970 and 1971. For the year 1972 he is rated as "very good" in two ratable items, and "good" in another four, and as "satisfactory" in the remaining four items. The same reporting officer in the report for the year 1973 rates him as "excellent" in six ratable items and "very good" in the remaining four.

It is obvious from the aforesaid exposition of the contents of the respective confidential reports that, to say the least, the applicant has got equal if not better confidential reports than those of the three interested parties. Of course, these reports emanate from different reporting officers and they could only be regarded as constituting part of the overall picture of the merits of each candidate which the Commission had to weigh as a whole (see *Georghiou v. The Republic* (1975) 3 C.L.R. 156 at p. 159 and *Evangelou v. The Republic* (1965) 3 C.L.R. p. 292 at p. 297).

In addition, there is the recommendation of the Head of the Department in favour of the interested parties. Had it been a case where mere abuse of power was relied upon in the sense that the respondent Commission had failed in their duty to select the most suitable candidate for promotion in which case the applicant would have to establish striking superiority over the others, I might not have interfered with the *sub judice* decision in respect of these three officers but unlike the case of the remaining officers where the recommendation of the Head of the Department is consistent with the administrative reports to which they had referred and to the other facts which they took into account, in the case of these three officers this is not so. Even if their reports were equal, the situation would not have changed. There does not appear to have been recorded in the Commission's minutes, any specific views of the Head of the Department concerned which could be treated as justifying the course of overlooking the seniority of the applicant and the very good

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reports on her in this case, nor the recommendation of the Head of Department (the Director of Personnel) is supported, on the face of it, by the contents of the relevant annual confidential reports, a situation that makes the reasoning of the *sub judice* decision inadequate. As stated in the *Partellides* case (*supra*) p. 484, “such a general statement in the minutes of the Respondent, as aforesaid, cannot have the effect of rendering the promotion of . . . . . one which can be treated as having been properly decided upon in the exercise of the particular powers of the Respondent”.

In the result the recourse succeeds in so far as the promotion of the aforementioned three interested parties is concerned and is declared null and void and of no effect whatsoever and it is dismissed in so far as it relates to the promotion of the remaining interested parties.

In the circumstances, there will be no order as to costs.

*Application succeeds in part. No order as to costs.*