

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION
ELENI ELIADOU DUNCAN,

ELENI ELIADOU
DUNCAN
v.
REPUBLIC
(PUBLIC
SERVICE
COMMISSION)

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 30/77).

Public Officers—Promotions—Post of School Clerk, 1st Grade—
Merit and qualifications—Applicant and interested parties of
more or less the same merit—And their qualifications satisfy-
ing the relevant schemes of service—Additional qualifications
5 —Effect—Seniority—Applicant by 3 years and 4 months se-
nior to one of interested parties—Seniority a decisive factor
when all other factors are more or less equal—Which is not
the case because the interested parties were recommended by
Head of Department, in forwarding their application to the
10 respondent, and applicant was not so recommended—And be-
cause of the performance of the interested parties during the
interview—Sub judice decision being the result of exercise of
discretionary power by the Commission, this Court cannot
15 substitute its own discretion for that of the Commission and
can only interfere to set aside such decision only when estab-
lished that the person not selected did have striking superiority
over the person selected—The onus always lying on the appli-
cant which she has failed to discharge in the instant case.

Public Officers—Promotions—Head of Department—Recommen-
20 dations of—Section 44(3) of the Public Service Law, 1967—
In forwarding applications for promotion Head of Department
not precluded to give thereon his view on the candidates—And
the making of written recommendations before the meeting
does not exclude the expression of views by the Head of De-
25 partment or his representative at the meeting at which the fil-
ling of the vacancy is considered.

Public Officers—Promotions—Qualifications—Additional qualifica-
tions—Effect.

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*Public Officers—Promotions—Seniority—Not the decisive factor—
When does it prevail.*

*Words and phrases—“Recommendations” in section 44(3) of the
Public Service Law, 1967 (Law 33/67).*

*Public Officers—Promotions—Interview of candidates—Due regard
to be paid to the evaluation of candidates made through the
interview especially when relevant scheme of service makes
provision for possession by the candidates of organizing and
administrative ability and ability to supervise and guide sub-
ordinate staff—Personality of candidates.*

Administrative acts and decisions—Reasoning.

The applicant in this recourse, who is a School Clerk 2nd Grade, challenges the validity of the promotion of the two interested parties to the post of School Clerk 1st Grade. In making the promotions to this post the Commission* considered, *inter alia*, the merits, qualifications and experience of the candidates as well as their performance during the interview and observed that the interested parties gave very satisfactory replies to questions put to them and generally they proved to be the best candidates.

In forwarding the applications of the candidates, the Head of Department made no comment on that of the applicant but on those of the interested parties he wrote “transmitted and recommended warmly”.

The applicant possessed higher or additional qualifications than those required by the relevant scheme of service but the Commission found that both interested parties satisfied the requirements of the said scheme.

The confidential reports of the applicant and the two interested parties were more or less the same though one could not fail noticing that those of interested party Vassiliou were somehow better than those of the applicant. Applicant and one of the interested parties were of equal seniority but applicant had three years and four months seniority over interested party Vassiliou.

Counsel for the applicant contended:

(a) That the Public Service Commission failed in its pa-

* See the relevant minutes at pp. 158-159 *post*.

ramount duty to appoint and/or select the best candidate for the post.

(b) That the *sub judice* decision was not duly reasoned.

5 (c) That though the Head of Department was entitled to make oral recommendations at the meeting at which the respondent Commission was considering the filling of the posts in question, yet he was not entitled to make written recommendations on the applications of the candidates, particularly as he had chosen to send another officer at that meeting, so delegating his powers.

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Held, (1) (after comparing the respective careers and merits of the applicant and the interested parties vide pp. 160-163 post) that seniority forms part of the overall picture of the candidates, but it is not a decisive factor except when all other factors are more or less equal; that irrespective of seniority, in this case not all other things were equal in respect of the candidates when the sub judice decision was taken so that the seniority of applicant should prevail because of the fact that the Head of Department made no comment on applicant's application in forwarding it to the Commission whereas he recommended warmly those of the interested parties and because of the fact that the Commission gave due regard to the performance of the candidates at the interview (and found that both interested parties have given very satisfactory replies to questions put to them and generally they proved to be the best candidates) a course which was proper in the circumstances because their personality was an important factor particularly so as the schemes of service provided for possession by the candidates of organizing and administrative ability and ability to supervise subordinate staff for which the personality of the leader is most significant (see Panayiotou & Another v. Republic (1968) 3 C.L.R. 639 at p. 642).

(2) That the possession of qualifications other than those which might be deemed to be an advantage in a candidate's favour under the relevant scheme of service cannot properly tip the scales in his favour (see *Vonditsianos & Others v. Republic* (1969) 3 C.L.R. 83 at p. 91).

(3) That there is nothing in the Law to prevent the Head of a Department, through whom applications for promotion or appointment to a post are forwarded to the Public Service Commission, from giving thereon his views on the applicant;

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that under section 44(3) of the Public Service Law, the Public Service Commission in making a promotion must have due regard to the recommendations made in that respect by the Head of the Department in which the vacancy exists; that the law does not prescribe either the form or the time at which such recommendations will be made; that the word "recommendations" in this context has a wide enough meaning to include both written recommendations made before the relevant meeting of the respondent Commission takes place, as well as oral recommendations made during such meeting; that, furthermore, the making of a written recommendation before the meeting does not exclude the expression of views by the Head of a Department or his representative at the meeting at which the filling of a vacancy is considered; that the fact that a representative of the Head of a Department attends the relevant meeting does not render improper the existence of a written recommendation made by the Head of the Department earlier; and that, accordingly, the contention of counsel must fail.

(4) That perusal of the relevant minutes and the material in the file as a whole, shows that the *sub judice* decision was duly reasoned and contained all cogent facts upon which it was reached after a proper comparison of all candidates.

(5) That bearing in mind that the *sub judice* decision was the result of the exercise of discretionary power by the administration and that in law this Court is not entitled to substitute its own discretion for that of the appropriate organ, it has come to the conclusion that the *sub judice* decision was reasonably open to the respondent Commission and no ground exists entitling or requiring it to interfere with the result of the exercise of such discretion; that being a selection for promotion on merit, qualifications and seniority, this Court as it has already been stated, cannot interfere to set aside such a decision, unless it is established that the person not selected did have striking superiority over the person selected and the onus lies always on the applicant which in the instant case she has failed to discharge; (see *Evangelou v. The Republic* (1965) 3 C.L.R. 292 at p. 300 and *Georghiades and Another v. The Republic* (1970) 3 C.L.R. 257 at 266); and that, accordingly, the recourse must fail.

Application dismissed.

Cases referred to:

Vonditsianos and Others v. Republic (1969) 3 C.L.R. 83 at p. 91;

Georghiades and Another v. Republic (1975) 3 C.L.R. 143
at p. 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;

5 *Pariayiotou and Another v. Republic* (1968) 3 C.L.R. 639 at
p. 642;

Evangelou v. Republic (1965) 3 C.L.R. 292 at p. 300;

Georghiades and Another v. Republic (1970) 3 C.L.R. 257 at
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10 **Recourse.**

Recourse against the decision of the respondent Commission to promote the interested parties to the post of School Clerk, 1st Grade in preference and instead of the applicant.

15 *M. Christofides*, for the applicant.

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

Cur. adv. vult.

The following judgment was delivered by:-

20 A. LOIZOU, J.: The applicant by the present recourse
seeks the annulment of the decision of the respondent
Commission by which Michael Photiou and Vassilios Chr.
Vassiliou, (hereinafter to be called the interested parties),
25 were promoted to the permanent post of School Clerk, 1st
Grade.

According to the relevant scheme of service which was
in force at the time of the filling of the said vacancies, the
said post was a first entry and promotion post. The filling
of these vacancies was advertised in the official Gazette
30 of 2.4.1976 under Not. 581 and in response thereto, nine
applications were submitted, but only six of the candi-
dates, among whom the applicant and the interested par-
ties, were invited for interview in the presence of the Di-
rector-General of the Ministry of Education.

35 At the meeting of the respondent Commission of the

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17th June, 1976, at which the filling of the said vacancies was considered, Mr. H. Ierides, Senior Administrative Officer represented the Director-General of the Ministry of Education. The minutes of the Commission, so far as material to the issues raised in this recourse, read:

“The Commission as well as the Representative of the Ministry of Education put several questions to all the candidates on matters of general knowledge and on matters connected with the duties of the post as shown in the relevant scheme of service.

The Commission considered the merits, qualifications and experience of the candidates interviewed as well as their performance during the interview (personality, alertness of mind, general intelligence and the correctness of answers to questions put to them, etc.).

The Personal Files and the Annual Confidential Reports of all the candidates were also taken into consideration.

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The Commission observed also that, during the interview, Messrs. Michael Photiou and Vasilios Chr. Vasiliou gave very satisfactory replies to questions put to them and generally they proved to be the best candidates for appointment or promotion to the above post.

The Representative of the Ministry of Education stated that both the officers referred to above were serving in the post of School Clerk, 2nd Grade, their services have been very satisfactory and considered them suitable for the post of School Clerk, 1st Grade.

According to the relevant scheme of service, candidates for appointment or promotion to the post of School Clerk, 1st Grade, must possess a ‘very good knowledge of Greek and a good knowledge of one of the prevailing European languages’. The Commission observed that Mr. Michael Photiou had graduated the Commercial Lyceum, Famagusta, and that

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5 he had passed the English Lower Examination of the
Cyprus Certificate of Education in 1952. The Com-
mission observed that Mr. Vasilios Chr. Vasiliou had
graduated the Paphos Gymnasium in 1952. In spite
of the above and as all the candidates had stated on
their application that they were familiar with the
Greek and English languages, a good number of the
questions put to the candidates, during the interview,
were in Greek as well as in English. From the replies
10 to questions put to Messrs. Michael Photiou and Va-
silios Chr. Vasiliou, and having regard to their long
and satisfactory service in the Government as well as
to their educational qualifications, the Commission
was satisfied that the officers in question did possess
15 a 'very good knowledge of Greek' and a 'good know-
ledge of English', which is one of the prevailing Euro-
pean languages.

20 After considering all 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, abilities and experience
of these candidates, as well as to their suitability for
appointment to the above post as shown at the inter-
view, the Commission came to the conclusion that
25 the following candidates were on the whole the
best. The Commission accordingly decided that the
candidates in question be promoted to the permanent
post of School Clerk, 1st Grade w.e.f. 15.10.75.

30 Vasilios Chr. Vasiliou
Michael Photiou".

The grounds of law relied upon on behalf of the appli-
cant, are set out in the application and are in effect the
following:

- 35 1 (a) The respondent Commission failed in its pa-
ramount duty to appoint and/or select the
best candidate for the post.
- (b) The omission to promote the applicant,
though strikingly superior to those selected
for promotion, amounts to abuse and/or
40 wrong exercise of discretion.

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(c) There has been a misconception of fact, as the respondent Commission accepted facts and situations contrary to the material in the file.

(d) The aforesaid constitute also a violation of the Public Service Law of 1967 (Law 33/67), and in particular, section 44, subsections (2) and (3) and/or a violation of the general principles of administrative law.

(2) The *sub judice* decision is not duly reasoned and/or reasoned at all, nor does it contain special reasoning by setting out the real facts and reasons for which the *sub judice* decision was reached, and

(3) The respondent Commission did not compare all the candidates simultaneously and/or each one of them with the remaining.

In the course of the address on behalf of the applicant, it was further contended that the Director-General, though the Head of the Department and entitled to make oral recommendations at the meeting at which the respondent Commission was considering the filling of the vacancies to the post in question, yet, he was not entitled to make written recommendations as well before that meeting, particularly as he had chosen to send Mr. Ierides as his representative at the meeting, so delegating his powers. Alternative to this, it was argued, that even if he was entitled to make such recommendation, same was not duly reasoned.

The first ground of law relied upon on behalf of the applicant, calls for a comparison of the respective careers and merits of the applicant and the interested parties.

The applicant is a graduate of the Pancyprian Gymnasium, Nicosia and of the Senior Commercial Class of that school, she has a certificate in book-keeping (Intermediate of L.C.C.) and passed three subjects of the Cyprus Certificate of Education, including the English Higher. She started work in 1952 as a School Clerk under the School Committee of Nicosia and she eventually became a School Clerk, 2nd Grade, on the 1st April, 1965.

Interested party Michalakis Photiou is a graduate of the Commercial Lyceum, Famagusta. He passed the C.C.E.

English Lower, he has a certificate in book-keeping (Elementary of L.C.C.), and started as a School Clerk of the Commercial Lyceum of Famagusta, a private school. He became a School Clerk 2nd Grade on the 4th April, 1965.

5 Interested party Vassiliou is a graduate of the Paphos
Gymnasium. He passed the examinations in General Orders
and Financial Instructions, as well as the Store Regulations.
10 He started his career in 1952 as a civilian clerk, Grade B
with the British Army in the Suez Zone and in July of the
same year he joined the Cyprus Police Force until August,
1955, when he was discharged for behaviour connected with
the liberation struggle. In February, 1954 he was employed
at Limni Mines. In December, 1955 he was employed as a
15 School Clerk by the School Committee of Paphos and became
a School Clerk 2nd Grade on the 1st August, 1968.

The confidential reports of the applicant and the two
interested parties are more or less the same, though one
20 may not fail noticing that those of interested party Vassiliou
are somehow better than those of the applicant that they are
more elaborate in the comments for the gradings given,
particularly so the last two reports. Their qualifications
have been found to satisfy the schemes of service. The
applicant has, admittedly, passed the English Higher
25 of the Cyprus Certificate of Education, which, interested
party Vassiliou, does not appear to have passed, but the
knowledge of both Greek and English which is a necessary
qualification under the scheme of service, was examined
by the respondent Commission and "a good number of
30 the questions put to the candidates during the interview
were in Greek as well as in English". The respondent
Commission further stated that from the replies given and
having regard to their long and satisfactory service in the
Government, as well as their educational qualifications,
35 it was satisfied that the interested parties did possess a
very good knowledge of Greek and a good knowledge of
English. In fact, for interested party Vassiliou, it may be
stated that the nature of his employment prior to his
40 becoming a school clerk, was conducive to a good knowledge
of English.

It was pointed out on behalf of the applicant, that she
also had knowledge of French, but as held in *Vonditsianos*

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and others v. The Republic (1969) 3 C.L.R. 83 at p. 91,
“ . . . the possession of qualifications, other than those
which might be deemed to be an advantage in his favour
under the relevant scheme of service, could not, properly,
have tipped the scales in his favour”.

With regard to their qualifications, my attention was
drawn to the fact that interested party Photiou, a graduate
of a Commercial School, had not been taught Ancient
Greek and his marks in Modern Greek were 6½, whereas
the applicant a graduate of a Classical Gymnasium, was
taught both Ancient and Modern Greek and her marks
were 7 and 8 respectively. It was also stressed on behalf
of the applicant, that the average mark in her school leav-
ing certificate was 8.61, that of interested party Photiou 8
and of interested party Vassiliou 15½ out of 20.

With regard to their seniority, it may be observed, that
the applicant and the two interested parties became Clerks
B under the then Greek Communal Chamber, on 1.9.1961
and School Clerks 3rd Grade on the 1st May, 1964. The
applicant and interested party Photiou were promoted to
the post of School Clerk 2nd Grade on the 1st April, 1965,
whereas interested party Vassiliou on the 1st August
1968, which gives to the applicant three years and four
months seniority over him, in view of the provisions of
section 46 of the Public Service Law.

As repeatedly held, seniority forms part of the overall
picture of the candidates, but it is not a decisive factor,
except when all other factors are more or less equal. (See
Georghiades and another v. The Republic, (1975) 3
C.L.R. 143 at p. 152, following *Lardis v. The Republic*
(1967) 3 C.L.R., 64 at p. 71 and also *Partellides v. The
Republic* (1969) 3 C.L.R. 480 at p. 484). The signifi-
cance, therefore, of seniority, as set out in the Case Law
of this Court, further calls for consideration of whether all
other things were equal.

In this case, in order to complete the overall picture of
the candidates that was before the Commission when
taking the *sub judice* decision, reference must be made to
the fact, that in forwarding the applications of the candi-
dates, the Director-General, as Head of the Department,
made no comment on that of the applicant, whereas, for
the two interested parties, he thought fit to include his
views. For interested party Photiou he said, “transmitted

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5 and recommended warmly. The services and conduct of the applicant were very satisfactory”, and for interested party Vassiliou, the Director-General wrote: “Transmitted and recommended warmly. The applicant is very able, hard working and conscientious officer”.

10 Furthermore, the respondent Commission gave due regard to the performance of the candidates at the interview and both interested parties were found to have given very satisfactory replies to questions put to them and generally, “they proved to be the best candidates for appointment or promotion to the post in question”. This was proper, in the circumstances, because their personality was an important factor to be weighed by the respondent Commission, particularly so, in view of the qualifications required under the schemes of service, for possession by the candidates of organizing and administrative ability and ability to supervise and guide subordinate staff, for which the personality of the leader is most significant. If any authority is needed for this proposition, a similar approach is to be found in the case of *Panayiotou and another v. The Republic* (1968) 3 C.L.R. 639 at p. 642, where it was stated by Triantafyllides, J. as he then was, “So, rightly, in my view, the Commission paid due regard to the evaluation of the candidates made through the interviews and was, to a certain extent, guided accordingly in reaching its decision”. Further, the representative of the Ministry of Education, present at the meeting in question, stated that the services of these two interested parties have been very satisfactory and considered them suitable for the post of School Clerk 1st Grade.

25 It is obvious, therefore, from the above, that irrespective of seniority, not all other things were equal in respect of the candidates when the *sub judice* decision was taken so that the seniority of the applicant should prevail.

35 A perusal of the relevant minute and the material in the file as a whole, shows that the *sub judice* decision was duly reasoned and contained all cogent facts upon which it was reached after a proper comparison of all candidates.

40 Bearing in mind that the *sub judice* decision was the result of the exercise of discretionary power by the administration and that in law this Court is not entitled to substitute its own discretion for that of the appropriate organ, I have come to the conclusion that the *sub judice* decision

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was reasonably open to the respondent Commission and no ground exists entitling or requiring me to interfere with the result of the exercise of such discretion. Being a selection for promotion on merit, qualifications and seniority, this Court as it has already been stated, cannot interfere to set aside such a decision, unless it is established that the person not selected did have striking superiority over the person selected and the onus lies always on the applicant which in the instant case she has failed to discharge. (See *Evangelou v. The Republic* (1965) 3 C.L.R. 292 at p. 300 and *Georgiades and another v. The Republic* (1970) 3 C.L.R. 257 at p. 266).

It remains, however, to deal with the additional ground of law relied upon by the applicant in this recourse. In my view, there is nothing in the law to prevent the Head of a Department through whom applications for promotion or appointment to a post are forwarded to the Public Service Commission from giving thereon his views on the applicant.

Under section 44(3) of the Public Service Law, the Public Service Commission in making a promotion must have due regard to the recommendations made in that respect by the Head of the Department in which the vacancy exists. The law does not prescribe either the form or the time at which such recommendations will be made. The word "recommendations" in this context has a wide enough meaning to include both written recommendations made before the relevant meeting of the respondent Commission takes place, as well as oral recommendations made during such meeting. Furthermore, the making of a written recommendation before the meeting does not exclude the expression of views by the Head of a Department or his representative at the meeting at which the filling of a vacancy is considered. Nor does the fact that a representative of the Head of a Department attends the relevant meeting renders improper the existence of a written recommendation made by the Head of the Department earlier.

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.