

1976 August 9

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COSTAS SKARPARIS,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Case No. 259/70).

---

*Public Officers—Appointments and promotions—“First entry and promotion post”—Minutes of Public Service Commission—Absence of reference therein to the confidential reports and personal files of the candidates—Does not lead to inference that the Commission did not have them before it—Moreover, in the absence of any proof to the contrary, the Commission must be taken to have conducted its proceedings in a regular manner in the view of the presumption of regularity of administrative actions.* 5

*Public Officers—Appointments and promotions—Post of Assistant Director (Public Health—Preventive Medicine)—Schemes of service—Interpretation and application of, by Public Service Commission—Principles on which Administrative Court interferes—Scheme of service providing that preference would be given to candidates possessing a postgraduate qualification and experience in matters of Public Health—Reasonably open to the Commission to interpret it as meaning that such preference had to be given if all other things were equal—Overwhelming seniority of interested party in comparison to applicant—Both received post graduate education abroad but applicant possessed said “preference” post-graduate qualification whereas interested party did not—Interested party recommended for appointment by Head of Department who stated that applicant was not suitable—Reasonably open to the Commission to make the sub judice appointment—Recommendation of Head of Department constituted a very good reason for* 10  
15  
20

*not preferring applicant in spite of his said postgraduate qualifications—The more so as the post in question was one requiring specialised knowledge (See Theodossiou v. Republic, 2 R.S.C.C. 44 at p. 48).*

5 *Administrative Law—Presumption of regularity of administrative decisions—Application of.*

10 The applicant, a Medical Officer, Class I, applied for appointment to the post of Assistant Director (Public Health—Preventive Medicine) in the Medical Department, a “first entry and promotion *post*”.

After the Public Service Commission had interviewed the applicant and two other candidates it decided\* that the interested party was on the whole the best and appointed him to the said post. Hence the present recourse:

15 As in the minutes of the Commission there was a reference to the views expressed by the representatives of the Ministry of Health, the Court, on the application of Counsel for the applicant, directed that the Commission should provide a summary of such views. Though the Commission could not recollect  
20 what was exactly said by the said representatives, in view of the considerable time that has lapsed, they remembered that the representatives of the Ministry did not consider applicant suitable for appointment to the post in question and they recommended the interested party as the best.

25 Counsel for the applicant contended:

(a) That the Commission approached the filling of the post in question only as if it was a first entry appointment and not, also, as a promotion, even though all the candidates were at the time serving in the Medical Services; and that, as a result, there was no compliance  
30 with section 44 of Law 33/67 because the Commission failed to take into account the annual confidential reports regarding the candidates and their personal files.

35 (b) That the applicant was superior both as regards the academic qualifications and experience, to the interested

\* See the whole text of the decision at p. 111 *post*.

party. Counsel submitted, in this connection, that as the scheme of service provided that preference would be given to those of the candidates possessing a post-graduate qualification and experience in matters of Public Health, the applicant ought to have been appointed because he possessed a postgraduate qualification in Public Health whereas the interested party did not. 5

*Held*, (1) (a) the absence of a reference, in the relevant minutes of the Commission, to the confidential reports and personal files does not lead to the inference that the Commission did not have before it these reports and files; on the contrary, there are very clear indications that this material was indeed before it, because it is stated in the said minutes that the Commission considered the merits, qualifications and experience of the candidates and this could not have been done without reference to the confidential reports and their personal files. 10 15

(1) (b) Moreover, in the absence of any proof to the contrary—and none has been adduced—and in the light of the presumption of regularity of administrative actions it is proper to hold that the Commission conducted its proceedings in a regular manner and, consequently, that in examining the merits, qualifications and experience of the candidates it studied duly the confidential reports and the personal files concerning them (*See, inter alia, Kousoulides and Others v. The Republic* (1967) 3 C.L.R. 438 at p. 447). 20 25

(2) (*After stating the principles on which this Court will interfere with the construction and application of a scheme of service by the Public Service Commission—vide pp. 113-14 post*). As I understand the provisions of the relevant scheme of service, and as it was certainly reasonably open to the Commission to understand it too, preference *had* to be given to a candidate possessing a postgraduate qualification in Public Health only if all other things were equal; in other words, the notion of preference for possessing a qualification in Public Health is equivalent to the notion of such a qualification being considered as an advantage; the Commission did not, therefore, act in contravention of the scheme of service by not appointing the applicant. 30 35

(3) (a) (*On the question whether it was reasonably open to the* 40

Commission to select for appointment the interested party instead of the applicant and whether it had a valid reason for doing so especially in view of the postgraduate qualification of the applicant in Public Health (See *Tourpeki v. Republic* (1973) 3 C.L.R. 592 at p. 603)) Having taken into account the overwhelming, in comparison to the applicant, seniority (see p. 114 of the judgment *post*) of the interested party, both in the public service and in the grade from which he was promoted to the *post* concerned, plus the fact that not only both of them had received postgraduate education abroad, (see p. 114 *post*) and have had, thus, an opportunity to acquaint themselves with the advances of Medicine in various fields, but, also, that the representatives of the Ministry of Health had, at the relevant meeting of the respondent Commission, recommended for appointment the interested party and they had, on the other hand, stated that the applicant was not suitable for appointment, I have reached the conclusion that it was reasonably open to the Commission to make the *sub judice* appointment.

(3) (b) The recommendation of the Ministry concerned constitutes a very good reason for not preferring the applicant in spite of his postgraduate qualification in Public Health; the more so as the post in question was one requiring specialized knowledge and in such a case the recommendation of the Head of Department is even more weighty than usually (see, *inter alia*, *Theodossiou v. Republic*, 2 R.S.C.C. 44 at p. 48).

*Application dismissed.*

Cases referred to:

- Kousoulides and Others v. The Republic* (1967) 3 C.L.R. 438 at p. 447;
- Lordos Ltd., and Others v. The Republic* (1975) 2 J.S.C. 214, at p. 225 (to be reported in (1974) 3 C.L.R.);
- Republic v. Ekkeshis* (1976) 1 J.S.C. 137 at p. 146 (to be reported in (1975) 3 C.L.R.);
- Michael v. The Republic* (1976) 4 J.S.C. 601 (to be reported in (1975) 3 C.L.R.);
- Papapetrou v. The Republic*, 2 R.S.C.C. 61 at pp. 66, 67;
- Georgiades and Others v. The Republic* (1967) 3 C.L.R. 653 at p. 667;
- Aristotelous v. The Republic* (1969) 3 C.L.R. 232 at p. 242;

- Josephides v. The Republic*, 2 R.S.C.C. 72 at p. 77;  
*Petsas v. The Republic*, 3 R.S.C.C. 60 at p. 63;  
*Neophytou v. The Republic*, 1964 C.L.R. 280 at p. 299;  
*Tryfon v. The Republic* (1968) 3 C.L.R. 28 at p. 40;  
*Kyriakou and Others v. The Republic* (1975) 2 J.S.C. 130 at p. 5  
 140 (to be reported in (1975) 3 C.L.R.);  
*Tourpeki v. The Republic* (1973) 3 C.L.R. 592 at p. 603;  
*Theodossiou v. The Republic*, 2 R.S.C.C. 44 at p. 48.

### Recourse.

Recourse against the decision of the respondent to appoint 10  
 the interested party Dr. Joseph Christodoulides to the post of  
 Assistant Director (Public Health-Preventive Medicine) in the  
 Medical Department, in preference and instead of the applicant.

*L. Papaphilippou*, for the applicant.

*L. Loucaides*, Deputy Attorney-General of the Republic, 15  
 for the respondent.

*Cur. adv. vult.*

The following judgment was delivered by:

TRIANTAFYLIDIS P.: The applicant in this recourse challenges 20  
 the appointment, by the respondent Public Service Commission,  
 of Dr. Joseph Christodoulides (to be referred to in this  
 judgment as the "interested party") to the post of Assistant  
 Director (Public Health-Preventive Medicine) in the Medical  
 Department, in preference and instead of the applicant.

As the post in question is a "first entry and promotion post" 25  
 the Commission decided, on April 11, 1970, to advertise it in  
 the usual course.

The advertisement was published in the Official Gazette on 30  
 April 17, 1970, and it was framed on the basis of the contents  
 of the relevant scheme of service.

On June 18, 1970, the Commission interviewed three candi- 35  
 dates in the presence of the then Director-General of the Mini-  
 stry of Health, Dr. V. Vassilopoulos, and of the then Director  
 of the Department of Medical Services, Dr. M. Economopoulos  
 (see *exhibit* 10).

As its meeting of July 2, 1970 (see *exhibit* 11) the Commission reached its *sub judice* decision which reads as follows:-

5           “ The Commission, after considering the merits, qualifications and experience of the candidates interviewed on  
10           18.6.70 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.) and bearing in mind the views expressed by the Representatives of the Ministry of Health on each one of them on the date of the interview, decided unanimously that Mr. Joseph Christodoulides was on the whole the best and that he be appointed to the permanent post of Assistant Director (Public Health—Preventive Medicine), w.e.f. 1.8.70.”

15           As in the above minutes of the Commission there is a reference to the views expressed by the representatives of the Ministry of Health (that is Dr. Vassilopoulos and Dr. Economopoulos) counsel for the applicant applied on October 16, 1970, that the respondent should provide the Court with a summary of the said views, and, on October 22, 1970, counsel for respondent  
20           was directed to file a statement, signed by the Chairman of the Commission or one of its Members, containing such views; this direction was made in the exercise of the powers of the Court under rule 12 of the Supreme Constitutional Court Rules, 1962.

25           The statement in question was filed on March 5, 1971 (see *exhibit* 13) and it reads as follows:-

30           “ With regard to the Direction of the Supreme Court on the above case, we cannot recollect what was said by Dr. Vasilopoulos and Dr. Economopoulos in detail concerning the applicant and the interested party as there is nothing recorded in the minutes and a considerable time has lapsed since the interviews were held. We do, however, remember that, having in mind the duties of the post as well as the abilities of the applicant, the Representatives of the Ministry of Health did not consider him suitable for appointment to the post of Assistant Director (Public Health—Preventive Medicine). The Representatives of the Ministry of Health recommended, however, the interested party as the best.”  
35

The first contention of counsel for the applicant, with which I have to deal in this judgment, is that the Commission approached the filling of the post in question only as if it was a first entry appointment and not, also, as a promotion, even though all the three candidates were at the time serving in the Medical Services of the Republic; counsel submitted that, as a result, there was no compliance with section 44 of the Public Service Law, 1967 (Law 33/67), and that, in particular, the Commission failed to take into account the annual confidential reports regarding the candidates and the contents of their personal files; in this respect reliance was placed on the above quoted minutes containing the *sub judice* decision of the Commission, and on the statement filed on March 5, 1971 (*exhibit 13*), in which no express reference is made either to the confidential reports or to the personal files of the candidates.

In my view it would not be reasonable to expect to find in *exhibit 13* any reference to the confidential reports or the personal files relating to the candidates, because that was merely a statement setting out the views expressed by the representatives of the Ministry of Health at the relevant meeting of the Commission. It would have been, of course, better if in the relevant minutes of the Commission (*exhibit 11*) there existed a reference to the confidential reports and personal files, but the absence of such a reference does not, in my opinion, lead to the inference that the Commission did not have before it these reports and files; on the contrary, there are very clear indications that this material was indeed before it, because in the said minutes it is stated that the Commission considered the merits, qualifications and experience of the candidates and this could not have been done without reference to the confidential reports and their personal files.

Also, in the absence of any proof to the contrary—and none has been adduced—and in the light of the presumption of regularity of administrative actions, it is proper to hold that the Commission conducted its proceedings in a regular manner and, consequently, that in examining the merits, qualifications and experience of the candidates it studied duly the confidential reports and the personal files concerning them, with the result that it had, *inter alia*, in mind the performance of the candidates at their respective posts in the Medical Services during the years preceding its *sub judice* decision.

Regarding the application of the presumption of regularity of administrative actions useful reference may be made to cases such as *Kousoulides and others v. The Republic*, (1967) 3 C.L.R. 438, 447, *Lordos Ltd. and others v. The Republic*, (1975) 2 J.S.C. 214, 225\*, *The Republic v. Ekkeshis*, (1976) 1 J.S.C. 137, 146\*\* and *Michael v. The Republic* (1976) 4 J.S.C. 601\*\*.

It has been contended by counsel for the applicant that his client was superior as regards both academic qualifications and experience to the interested party, and reference has been made, in this respect, to the qualifications needed under the relevant scheme of service, namely a Diploma in Medicine of the kind required for registration as a doctor in Cyprus, administrative experience, organizing ability and good knowledge of English; it was, also, stated in the advertisement of the vacancy in question—in accordance with the scheme of service—that preference would be given to those of the candidates who possessed a postgraduate qualification and experience in matters of Public Health.

It was, thus, submitted on applicant's behalf that in view of the nature of his academic qualifications, which were directly related to the duties of the post concerned, as they are described in the scheme of service, the applicant ought to have been appointed instead of the interested party.

Undoubtedly the respondent Commission had to comply with the relevant scheme of service in making the *sub judice* appointment (see, *inter alia*, *Papapetrou v. The Republic*, 2 R.S.C.C. 61, 66, 67, *Georgiades and others v. The Republic*, (1967) 3 C.L.R. 653, 667 and *Aristotelous v. The Republic*, (1969) 3 C.L.R. 232, 242). This Court, as an administrative court, will not interfere with the manner in which a scheme of service has been construed by the Public Service Commission so long as such construction was reasonably open to it; nor will this Court interfere with the application of a scheme of service on a particular occasion if such application was reasonably open to the Commission in the circumstances (see, *inter alia*, *Papapetrou supra*, 69, *Josephides v. The Republic*, 2 R.S.C.C. 72, 77, *Petsas v. The Republic*, 3 R.S.C.C. 60, 63, *Neophytou v. The Republic*

\* To be reported in (1974) 3 C.L.R.

\*\* To be reported in (1975) 3 C.L.R.



(1964) C.L.R. 280, 299, *Georghiades, supra*, 668, *Tryfon v. The Republic*, (1968) 3 C.L.R. 28, 40 and *Kyriakou and others v. The Republic*, (1975) 2 J.S.C. 130, 140)\*.

From a comparative table which has been produced (*exhibit* 12) it appears that the applicant was appointed as a Medical Officer, Class II, on August 14, 1961, and as a Medical Officer, Class I, on June 1, 1964. The interested party was appointed as District Surgeon, on August 3, 1940, and he was holding the post of Junior Specialist (Tuberculosis) since January 1, 1953. 5

Both of them are graduates of the Faculty of Medicine of Athens University; the applicant graduated in 1959 and the interested party in 1938. 10

The applicant, during the academic year 1968/1969, attended a postgraduate course in Public Health and Epidemiology at Zagreb University in Yugoslavia and received a diploma in relation thereto (see document No. 81 in the personal file of the applicant, which forms part of *exhibit* 14). On the other hand, the interested party (see document No. 64 in his personal file, which, also, forms part of *exhibit* 14) attended a course in Tuberculosis and Chest Diseases at the University of Wales, between 1950 and 1952, obtaining a relevant diploma, and he, also, received, in 1959, a certificate granted after a course on Industrial Health organized by the World Health Organization. It is, thus, clear that the applicant does possess a postgraduate qualification in Public Health, whereas the interested party does not. 15 20 25

In this connection it has been contended by counsel for the applicant that, as in the past the at the time Director-General of the Ministry of Health, Dr. Vassilopoulos had wrongly refused to regard him as being a specialist Epidemiologist, Dr. Vassilopoulos must have given the same erroneous information, in this respect, to the respondent Commission, with the result that it was made to act under a misconception of fact. I do not think that this is a matter which is of any real significance, because the relevant qualification of the applicant, which is described in a certificate to be found in his personal file (see the already referred to document No. 81), was before the Commis- 30 35

\* To be reported in (1975) 3 C.L.R.

sion at the material time; moreover, as the applicant has testified, he was asked about his qualifications when he was interviewed by the Commission.

5 If the respondent Commission had been *bound* to prefer someone like the applicant, who possessed a postgraduate qualification in Public Health, then I would have been inclined to hold that the Commission was bound to appoint the applicant instead of the interested party, who did not possess a postgraduate qualification in Public Health. As I understand, 10 however, the provisions of the relevant scheme of service, and as it was certainly reasonably open to the Commission to understand it too, preference *had* to be given to a candidate possessing a postgraduate qualification in Public Health only if all other things were equal; in other words, the notion of preference for 15 possessing a qualification in Public Health is equivalent to the notion of such a qualification being considered as an advantage; therefore, the Commission did not act in contravention of the scheme of service by not appointing the applicant.

20 There has to be examined next whether, in the circumstances of this particular case, it was reasonably open to the Commission to select for appointment the interested party instead of the applicant, and whether it had a valid reason for doing so especially in view of the postgraduate qualification of the applicant in Public Health.

25 As has been pointed out in *Tourpeki v. The Republic*, (1973) 3 C.L.R. 592, by A. Loizou J. (at p. 603):-

30 “ ..... and in case it was found by the Commission that the diploma possessed by the applicant was constituting an advantage, then convincing reasons should have been given for ignoring it .....”.

Having taken into account the overwhelming, in comparison to the applicant, seniority of the interested party, both in the public service and in the grade from which he was promoted to the post concerned, plus the fact that not only both of them 35 had received postgraduate education abroad, and have had, thus, an opportunity to acquaint themselves with the advances of Medicine in various fields, but, also, that, the representatives of the Ministry of Health had, at the relevant meeting of the respondent Commission, recommended for appointment the

interested party and they had, on the other hand, stated that the applicant was not suitable for appointment, I have reached the conclusion that it was reasonably open to the Commission to make the *sub judice* appointment; and the recommendation of the Ministry concerned constitutes a very good reason for not preferring the applicant in spite of his postgraduate qualification in Public Health; the more so as the post in question was one requiring specialized knowledge and in such a case the recommendation of the Head of Department is even more weighty than usually (see, *inter alia*, *Theodossiou v. The Republic*, 2 R.S.C.C. 44, 48). 5 10

For all the foregoing reasons this recourse fails and is dismissed accordingly; but, in the light of all relevant considerations, I am not prepared to make an order as to costs against the applicant. 15

*Application dismissed.*  
*No order as to costs.*