

1978 April 27

{A. LOIZOU, J.}

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KATINA PANAYIDOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 255/77).

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- Public Officers—Appointments and promotions—Post of Staff Nurse (F)—First entry post—Performance at the interview—And administrative ability—Should be considered as relevant factors—Seniority—Not by itself the determining factor but part of the overall picture of each candidate—All relevant factors duly taken into consideration and proper weight given to each one of them—Respondent has not failed in its paramount duty to select the candidate most suitable for the post in question—Applicant on whom the onus always lies has not established that he had striking superiority over those selected.* 5
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- Administrative Law—Administrative decision—Misconception of fact or law—Filling of first entry post in the public service—Reference to “appointment” or “promotion” in the relevant minutes of the appointing organ—Should be considered as a differentiation between those candidates in the service and those not in the service—And not as showing misconception either of fact or law regarding the nature of the post which was to be filled by the sub judice decision—Section 28 of the Public Service Law, 1967, definition of “appointment” and “promotion”.* 15
- Administrative Law—Administrative decision—Due reasoning—Decision concerning appointments and promotions to post of Staff Nurse (F)—Reasons therefor appearing in the relevant minutes of the Commission—And duly supplemented by the material in the files.* 20

*Administrative Law—Public Officers—Appointments or promotions—
Principles on which Administrative Court interferes with a decision
of the Public Service Commission.*

5 The applicant, who is an Assistant Nurse 1st Grade, was a
candidate for the vacant post of Staff Nurse (F) (Psychiatric)
in the Department of Medical Services, a first entry and promo-
tion post. After she had been interviewed by the respondent
Public Service Commission together with the other candidates
10 the Commission held* the view that she was not suitable for
promotion to the post in question having regard to her per-
formance at the interview. The Commission went on to state
that after taking into consideration "all the facts appertaining
to each one of the candidates and after giving proper weight
15 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 interview" decided to appoint
or promote to the post in question the interested parties.

20 Applicant was by nine months junior to interested party No.
1 but she was by 11 months senior to interested party No. 2
and by about six months senior to interested party No. 3. In-
terested party No. 4 had somehow longer service than applicant.
No question of seniority arose in respect of both interested
parties No. 5 and 6 because the first one entered the service
on daily wages as a staff nurse in 1974 and the second one entered
25 the service for the first time by means of the *sub judice* appoint-
ment.

The qualifications of the applicant and those of four of the
interested parties were the same but interested parties No. 4
and No. 6 were, also, trained in England.

30 *Counsel for the applicant in challenging the validity of the
sub judice promotions and appointments contended:*

35 (a) *That the respondent Commission acted in abuse or
excess of power, inasmuch as it failed to select the
most suitable candidate for the post, by ignoring the
striking superiority of the applicant as against the
interested parties when it relied only on the performance*

* See the relevant minutes at p. 148 *post*.

of the candidates, or at least of the applicant, at the interview and failed to take into consideration the objective criteria of merit, qualifications and seniority set out in section 44 of the Public Service Law, 1967 (Law 33/67).

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(b) That the *sub judice* decision was not duly reasoned at all and/or specially reasoned;

(c) That the *sub judice* decision was taken on a misconception of fact, as the respondent Commission wrongly considered the post in question as a promotion post, whereas in fact it was a first entry post.

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Held, dismissing the recourse (1) that the Commission did not rely only on the performance of the candidates at the interview but, as it appears from its minutes, it took into consideration all the facts pertaining to each one of the candidates and gave proper weight to the merits, qualifications, performance and experience of the candidates, as well as to their suitability for appointment as shown at the interview; and that, accordingly, it was reasonably open to the respondent Commission to reach the *sub judice* decision as it did after due inquiry in the proper exercise of its administrative discretion.

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(2) That it was a selection for appointment or promotion on merit, qualifications and seniority and the respondent Commission did not fail in its paramount duty to select the candidate most suitable for the post in question; that this Court cannot interfere with, and set aside such a decision unless it is established by the applicant on whom the onus always lies that she did have striking superiority over those selected (See *Evangelou v. The Republic* (1965) 3 C.L.R. 292 at p. 300); and that the applicant has not discharged this onus.

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(3) That though applicant was senior to interested parties Nos. 2 and 3, seniority by itself is not the determining factor but part of the overall picture of each candidate which, in the present case, had to be weighed in relation to the contents of the confidential reports of these two interested parties, which were better than those of the applicant, and in relation to their administrative abilities and to their performance at the interview. (See, also, *Theodossiou v. The Republic*, 2 R.S.C.C. 44).

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(4) That the *sub judice* decision was duly reasoned: The reasons given by the respondent Commission in making these promotions or appointments, which appear in the relevant minutes, were duly supplemented by the material in the files and this constituted proper reasoning in the circumstances.

(5) That the use of both words "appointment" and "promotion" by the Commission in its relevant minutes should be considered more as a matter of differentiation between those candidates in the service and those not in the service and as justified in the circumstances and not as showing misconception either of fact or law with regard to the nature of the post which was to be filled by the *sub judice* decision (See definition of the words "appointment" and "promotion" in section 28 of the Public Service Law, 1967). (pp. 154-55 *post*).

15 Cases referred to:

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

Georgiades and Another v. The Republic (1970) 3 C.L.R. 257 at p. 263;

Michael v. The Republic (1971) 3 C.L.R. 405 at p. 408;

20 *Theodossiou v. The Republic*, 2 R.S.C.C. 44.

Recourse.

Recourse against the decision of the respondent to appoint or promote the interested parties to the post of Staff Nurse (F) (Psychiatric) in the Department of Medical Services in preference and instead of the applicant.

I. Typographos, for the applicant.

Cl. Antoniadis, Counsel of the Republic, for the respondent.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks the annulment of the decision of the respondent Commission by which it appointed or promoted to the permanent post of Staff Nurse (F) (Psychiatric), in the Department of Medical Services, the interested parties, 1. Despina Erotokritou, 2. Maria Kassapi, 3. Stella Andreou, 4. Eleni Adamou, 5. Paraskevi Christofi, 6. Maria K. Haralambous, and not herself.

The aforesaid post is a first entry post and upon the approval of the filling of five vacancies thereof as well as any conse-

quential ones the respondent Commission duly advertised same and in response thereto eleven applications including that of the applicant and of the interested parties were submitted.

At its meeting of the 5th May, 1977 and in the presence of the Assistant Director of the Department of Medical Services and Dr. P. Matsas, Medical Superintendent Psychiatric Institutions, the respondent Commission interviewed the applicant and the interested parties. Several questions were put to them on matters of general knowledge and on matters connected with the post, as shown in the relevant scheme of service.

The relevant minutes of the respondent Commission read:-

“ 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 the candidates already in the service were also taken into consideration.

The Commission observed that, during the interview, Maria K. Haralambous, Anthoula L. Polycarpou, Paraskevi Christofi, Maroula A. Kassapi, Stella Andreou, Despina Erotokritou and Eleni A. Adamou gave very satisfactory replies to questions put to them and generally they proved to be suitable for appointment or promotion to the above post. The Commission held the view that the two remaining candidates (Vasiliki Loizidou and Katina Panayidou) were not considered suitable for promotion to the post of Staff Nurse (F), having regard to their performance at the interview.

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 interview, the Commission decided that the following candidates be appointed or promoted

to the permanent post of Staff Nurse (F) (Psychiatric) w.e.f. 1.8.77, as shown opposite their names:

	Maria K. Haralambous	-	to be appointed, on proba-	
			tion to the permanent post.	
5	Anthoula L. Polycarpou	-	do -	
	Paraskevi Christofi	-	do -	
	Maroula A. Kassapi	-	to be promoted to the per-	
			manent post.	
	Stella Andreou	-	do -	
10	Despina Erotokritou	-	do -	
	Eleni A. Adamou	-	do -	

As the remaining candidates were not considered suitable for appointment or promotion to the above post, the Commission decided that the remaining two vacancies in the post of Staff Nurse (F) (Psych.) be left unfilled for the time being."

Before examining the several grounds on which the application has been argued it is useful to refer to the careers of the parties as appearing from the relevant files. The applicant, like all the interested parties, is a graduate of a Greek Secondary School and was first appointed as an Assistant Nurse on the 1st November 1966 and became an Assistant Nurse (F) 1st Grade (Psych.) on the 1st May, 1972.

Interested party No. 1, Erotokritou was first appointed as an Assistant Nurse on the 15th July 1964 and became an Assistant Nurse (F) 1st Grade (Psych.) on the 1st August 1971.

Interested party No. 2, Kassapi was first appointed as Assistant Nurse in December 1967 and became an Assistant Nurse (F) 1st Grade (Psych.) on the 1st April 1973.

Interested party No. 3, Stella Andreou, was first appointed as Assistant Nurse on the 1st August 1967 and became an Assistant Nurse (F) 1st Grade (Psych.) on the 15th November 1972.

Interested party No. 4, Eleni Adamou was first appointed on the 28th September 1966 as Assistant Nurse and promoted to the post of Assistant Nurse 1st Grade (F) (Psych.) on the 1st May, 1972.

Interested party No. 5, Christofi was first appointed as a Staff Nurse on daily wages (F) (Psych.) in May, 1974.

Interested party No. 6, Charalambous, was first appointed in the Government Service by the *sub judice* decision.

In so far as the seniority of those already in the service is concerned and bearing in mind the provisions of section 46 of the Public Service Law, 1967, interested party No. 1, Erotocritou, is senior to the applicant by nine months. The applicant and interested party No. 4, Adamou, were promoted to the post of Assistant Nurse (F) 1st Grade on the same date as well as on two previous appointments and promotion, but interested party Adamou entered the service just over a month prior to the applicant. So to say the least this interested party has somehow longer service than the applicant.

Interested party No. 2, Kassapi though appointed and promoted on two previous occasions on the same date, as the applicant, she was promoted to the post of Assistant Nurse (F) 1st Grade on the 1st April, 1973 which makes her about 11 months junior to the applicant.

Interested party No. 3, Andreou, was also appointed or promoted on two previous occasions on the same date as the applicant, but considering the effective date of promotion to the post held before the *sub-judice* decision was taken, the applicant is about six months senior to her.

Interested party No. 5, Christofi, entered the service on daily wages as a Staff Nurse in 1974, and interested party No. 6, Charalambous entered the service for the first time, therefore, questions of seniority do not really arise in respect of both of them.

The qualifications of the applicant and the four interested parties are the same. Apart from their secondary school education they started their nursing career and qualified first as registered assistant nurses and then as registered mental nurses in Cyprus. Interested party No. 4, had her training at Horton Hospital School of Nursing, U.K. from 1967-1971 and interested party No. 6, Charalambous was also trained in England between the years 1968 and 1972 and served there as a staff nurse between

1972-1974; both served also in other institutions, private clinics, before their first appointment in the Government Service.

In order to conclude the picture, reference may be made also to the confidential reports of those of them in respect of which
5 same exist, inasmuch as there could not be confidential reports for interested parties No. 5 and 6. Needless to say that both had worked as staff nurses already in their career.

In the three last confidential reports the applicant is reported on all ratable items as very good and of average intelligence;
10 in the observations the reporting officer for the year 1974 says that "this officer has performed her duties most competently and diligently during the period under review;" in 1975 she is described as "a most diligent and competent Assistant Nurse", and for 1976 the comment is that she is "industrious, tactful
15 and conscientious. She has performed her duties competently".

Interested party No. 1, Erotokritou, is reported for the year 1974 as good on four ratable items, very good in five others and of average intelligence. The observation made by the reporting officer for that year is that "she is a quite pleasant
20 person, tactful and considerate towards the patients". For 1975 she is rated as very good on all ratable items and again of average intelligence; and the comments are that she is "a most competent and diligent Assistant Nurse who has performed her duties in a satisfactory manner". For the year 1976 she is
25 reported as being very good on five ratable items, as good on three and of general average intelligence. The observation made by her reporting officer is that "she has performed her duties competently and diligently during the period under review".

Interested party No. 2, Kassapi, for the years 1974, 1975 and 1976 is reported as very good on all ratable items, and of average intelligence, except that in 1974 her ability to co-operate with colleagues is rated as excellent. The observations made in
30 the three reports is that in 1974 "she is one of the best Assistant Nurses available. Pleasant in manners, tactful, discreet and possesses good administrative abilities"; in 1975, "A most competent and diligent Assistant Nurse with good administrative abilities" and the comment for 1976 "Polite, tactful and
35 conscientious nurse with good administrative abilities".

Interested party No. 3, Andreou, is reported as excellent on the items of reliability, thoroughness and adaptability, very good on the remaining items and of average general intelligence. The comment of the reporting officer for that year is that “she is one of the best Assistant Nurses. Pleasant in manners, 5
tactful, discreet and considerate towards the patients”; for the year 1975 the comment is, “A most competent and diligent Assistant Nurse with very good administrative abilities”; and for the year 1976, “One of the best nurses available. She possessed very good administrative abilities”. 10

Finally, for interested party No. 4, Adamou, the reports for the last three years are more or less the same; she is rated as very good on all ratable items, and of average intelligence and for 1975 and 1976 she is rated as good for initiative. The comments for 1974 are, “Though somewhat argumentative at 15
times, otherwise she has performed her duties most competently and diligently during the period under review”; for 1975, “A most competent and diligent Assistant Nurse, who performed her duties in a satisfactory manner during the period under review”; for 1976, “a conscientious, diligent and tactful nurse 20
with good administrative abilities”.

Having outlined the material in the files which were before the respondent Commission when the *sub judice* decision was taken with regard to the careers of the parties and in particular their respective merit, qualifications, seniority and of course 25
experience, I turn now to the grounds of law relied upon on behalf of the applicant.

The first three of them taken together, amount, in effect, to the contention that the respondent Commission acted in abuse or excess of power, inasmuch as they failed to select the most 30
suitable candidate for the post, by ignoring the striking superiority of the applicant as against the interested parties, by relying only on the performance of the candidates or at least of the applicant at the interview and failing to take into consideration the objective criteria of merit, qualifications and seniority set 35
out in section 44 of the Public Service Law, 1967 (Law No. 33/67).

It is true that in the minutes of the respondent Commission hereinabove set out, reference is made to the “very satisfactory

replies of the interested parties to questions put to them” and that “they generally proved to be suitable for appointment or promotion to the above post”, but the Commission did not stop at that; it further stressed that it considered “the merits, 5 qualifications and experience of the candidates interviewed”, as well as their performance during the interview, and concludes by saying that, “after considering all the above and after taking into consideration all the facts pertaining to each one of the candidates and after giving proper weight to the merits, quali- 10 fications, performance and experience of these candidates, as well as to their suitability for appointment to the above post as shown at the interview, the Commission decided.....” and went on to make its selection of the best candidates for appointment or promotion to the permanent post in question.

15 In my view it was reasonably open to the respondent Commission to reach the *sub judice* decision as it did after due inquiry in the proper exercise of its administrative discretion; all relevant factors were duly taken into consideration and proper weight given to each one of them as appears from the reference just 20 made to its minutes.

It was a selection for appointment or promotion on merit, qualifications and seniority and the respondent Commission did not fail in their paramount duty to select the candidate, most suitable for the post in question and this Court, as it has been 25 repeatedly stated, cannot interfere with, and set aside such a decision unless it is established by the applicant on whom the onus always lies that she did have striking superiority over those selected; (See *Evangelou v. The Republic* (1965) 3 C.L.R. 292 at p. 300 and *Georgiades and another v. The Republic* 30 (1970) 3 C.L.R. 257 at p. 263).

With regard to her seniority as against two of the interested parties, namely interested party No. 2, Kassapi and interested party No. 3, Andreou, I can only reiterate what was said in the case of *Evangelou (supra)* at p. 242 that seniority by itself 35 is not the determining factor but part of the overall picture of each candidate, and in the present case it had to be weighed in relation to the contents of the confidential reports and the performance at the interview which should always be considered as a factor in an administrative collective organ holding a 40 proper inquiry into the matter before exercising its administra-

tive discretion. Moreover, in the case of *Andreas Michael v The Republic* (1971) 3 C.L.R. 405 at p. 408 it was said by reference to what was stated in the case of *Theodossiou v. The Republic* 2 R.S.C.C p. 44 that it is not proper to treat the length of service exclusively as the vital criterion, but is always one of the factors to be considered. 5

A perusal of the confidential reports of these two interested parties leads one to the conclusion that they are better than those of the applicant.

The emphasis on their administrative abilities should also be borne in mind; it is a factor which must be taken as being a most relevant consideration and a material at that in determining the suitability in the post of staff nurse which presupposes administrative abilities for the performance of these duties and responsibilities as laid down in the scheme of service. 10 15

The next ground relied upon on behalf of the applicant is that "the *sub judice* decision was not duly reasoned or reasoned at all and/or specially reasoned". It was argued that the respondent Commission by referring only to the performance at the interview and giving no other reasons, it rendered the judicial control of this *sub judice* decision impossible as it did not contain the facts upon which the decision was reached. 20

I do not subscribe to this view, I have referred to the minutes and the reasons given therein by the respondent Commission in making these promotions or appointments, which are duly supplemented by the material in the files and this, constitutes, proper reasoning in the circumstances. 25

Finally it was argued that the decision was taken on a misconception of fact, as the respondent Commission wrongly considered the post in question as a promotion post, whereas in fact it was a first entry post, and misconception of fact leads indirectly to violation of law and it is a ground for annulment. It is the same with the case when the reasoning of the administrative act happens to be misconceived. 30

In the minutes reference is made to the suitability of the candidates "for appointment" to that post; as it is stated that 35

the Commission decided that the following candidates be "appointed or promoted to the permanent post".

In my view there is no misconception either of fact or law when the Commission refers to "appointment or promotion".

5 It is obvious that in so far as those in the Service were concerned and holding the post of Assistant Nurse 1st Grade their case could be rightly treated as coming within the definition of the word "promotion" to be found in section 28 of the Public Service Law, 1967, where it is defined as meaning "any change

10 in an officer's substantive status which carries with it an increase in the officer's remuneration or which carries with it the emplacement of the officer in a higher division of the Public Service, or on a salary scale with a higher maximum, whether the officer's remuneration at the time is increased by such a

15 change or not; and the expression "to promote" has to be construed accordingly".

On the other hand in so far as interested parties No. 5, Christofi and No. 6, Charalambous are concerned, it is a case of "appointment" in a first entry post, and not of "promotion",

20 as the first, though serving as a Staff Nurse on daily wages, held no substantive status in the service, and the second was not in the service at all. "Appointment" is defined in section 28 as meaning the conferment of an office upon a person not in the public service or the conferment upon an officer of an

25 office other than that which he substantively holds, not being a promotion.

Therefore, the use of both words "appointment" and "promotion" should be considered more as a matter of differentiation between those in the service and those not in the service and as

30 justified in the circumstances and not showing misconception either of fact or law with regard to the nature of the post which was to be filled by the *sub judice* decision.

For all the above reasons I have come to the conclusion that the present recourse should fail as it has not been established

35 that either, the applicant has striking superiority or the *sub judice* decision was not duly reasoned or there has been any

misconception of law or fact or that it was taken contrary to law.

Therefore, the recourse is dismissed, but in the circumstances I make no order as to costs.

Application dismissed. 5
No order as to costs.