

1978 June 3

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MAROULLA STEPHANOU,

Applicant,

v.

THE ATTORNEY-GENERAL OF THE REPUBLIC OF
CYPRUS, THROUGH THE PUBLIC SERVICE
COMMISSION,

Respondent.

(Case No. 171/77).

5 *Public Officers—Promotions—Post of Technical Assistant 1st Grade—
Merit—Qualifications—Seniority—Recommendations of the Head
of Department—Respondent Commission has not failed in its
paramount duty to select the best candidate—Applicant has not
discharged the onus of establishing that he had striking superiority
over those selected—Sub judice decision duly warranted by
material in the file and the recommendations of the Head of
Department.*

10 *Public Officers—Promotions—Qualifications—Schemes of service—
Whether proper inquiry carried out regarding possession by
candidates of educational qualifications required under the schemes
of service.*

15 The applicant in this recourse challenged the validity of the
decision of the respondent Public Service Commission whereby
the four interested parties were seconded to the temporary
(Development) post of Technical Assistant 1st Grade.

The Head of Department, who was present at the relevant
meeting of the Commission, is quoted* to have stated that having
regard to the merits and abilities of all the officers serving in

* See the minutes of the Commission at p. 169 *post*.

the post of Technical Assistant, 2nd Grade he considered the four interested parties as the best and recommended them for promotion.

Counsel for the applicant contended (a) That the respondent Commission failed in its duty to select the candidate most suitable for the post, particularly so in view of the fact that the applicant has better qualifications, seniority, longer service and better confidential reports; and 5

(b) That no proper inquiry was carried out with regard to the possession by the interested parties and in particular interested party Phinikarides of the qualifications required under the scheme of service and particularly so, in view of the fact that he had attended secondary education for four years only, which brought him within the note to the scheme* of service and the respondent Commission had, consequently, to be satisfied that he had "a general education of a standard equal to that of a five-year secondary school". 10 15

Held, (I) With regard to contention (a) above, after considering the career of the applicant and the interested parties as appearing in their personal files and confidential reports—vide pp. 170-73 post). 20

1 (a) That there does not exist any marked difference on the merits and experience of all candidates; and that, if anything, the balance leans in favour of the interested parties, if one looks at the repeated special confidential reports made on them and their contents coupled with the recommendations of the Head of the Department made for this purpose. 25

1 (b) That though, with regard to qualifications, the applicant is a graduate of a six-year secondary school as compared

* The educational qualifications required under the schemes of service, so far as relevant, read: "Leaving certificate from a six-year secondary school, preferably technical secondary school, and good knowledge of English..... Note: Public officers

- (a)
- (b) who on the 1st February, 1968 were in the service on a monthly basis and are in possession of a leaving certificate of a five-year secondary school or other equivalent qualification, or who, though not in possession of such a leaving certificate or qualification, have a general education of a standard deemed as equivalent to that of a five-year secondary school will be considered as suitable for appointment or promotion if they possess the remaining qualifications."

with interested party Phinikarides who attended a secondary school for four years and interested party Koundouris who had only five years' secondary education, Phinikarides took a correspondence course with the Royal Institution of Chartered Surveyors of London and the other three interested parties attended the Athens Technological Institute for three years

1 (c) That as the applicant was appointed to the permanent post of Technical Assistant 2nd Grade on the 1st February, 1969 and the interested parties on the 1st July, 1963, the interested parties are senior to the applicant (see section 46 (1) of the Public Service Law, 1967); and that the position is not affected by the interruption of applicant's service and her re-employment (see s. 46 (6) of the Law, p 174 *post*).

15 *Per curiam* Even if applicant's appointment to the temporary post of Technical assistant 2nd Grade were to be treated as if there was no substantial difference again such temporary appointment was made a month after the permanent appointment of the interested parties

20 1 (d) That on the totality of all relevant circumstances, the *sub judice* decision was reasonably open to the respondent Commission, that it was a selection for promotion on merit, qualifications and seniority and the respondent Commission did not fail in their paramount duty to select the candidates most suitable for the post, 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 had striking superiority over those selected and the applicant has not discharged this onus (See *Evangelou v The Republic* (1965) 3 C.L.R. 292 at p 300); and that the *sub judice* decision was duly warranted by the material in the file and the recommendations of the Head of Department

Held, (II) with regard to contention (b) above

35 1 (a) That as in taking the *sub judice* decision the respondent Commission referred to the educational qualifications required under the relevant schemes of service and considered, also, the merits, qualifications, seniority, service and experience of all the candidates, that as the Head of Department has stated that all interested parties "possess all qualifications laid down in the relevant scheme of service; and that as the Commission after

dealing with the aspect of the qualifications, namely, the good knowledge of English found that all interested parties did possess the said qualification, having regard to their satisfactory service in the Government as well as to their educational qualifications, it cannot be said that the Commission failed to carry out a proper inquiry regarding the possession by the interested parties of the relevant qualifications. 5

1 (b) That as in the schemes of service for the post of Technical Assistant 2nd Grade there exists an identical note of exemption as the one in the scheme of service for the post of 1st Grade; and that as interested party Phinikarides, who has not graduated a six-year or five-year school was found in July 1963 to qualify for the 2nd Grade, as possessing a general knowledge of a standard deemed as equivalent to the standard of a five-year secondary school, it would have been superfluous to make any more specific reference to the standard of education of a candidate after 15 years of satisfactory service and question whether his secondary school education did not meet the requirements of the service. 10 15

Application dismissed. 20

Cases referred to:

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

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

Recourse. 25

Recourse against the decision of the respondent to second the interested parties to the temporary (Development) post of Technical Assistant, 1st Grade in preference and instead of the applicant.

A. Paikkos, for the applicant. 30

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

Cur. adv. vult.

A. LOIZOU J. read the following judgment. The applicant by the present recourse seeks the annulment of the decision of the respondent Commission of the 7th January, 1977. by which, Athos Koundouris, George Phinikarides, Andreas Christoforides, Stavros Constantinou (hereinafter to be referred to, as the interested parties), were seconded to the temporary (Development) post of Technical Assistant 1st Grade. 35

The minutes of the respondent Commission in so far as relevant (Enclosure No. 5) read as follows:

5 “ The Director of the Department of Public Works stated that, having regard to the merits and abilities of all the officers serving in the post of Technical Assistant, 2nd Grade, he considered Messrs. Athos Koundouris, George Phinikarides, Andreas Christoforides and Stavros Constantinou as the best, their services have been very satisfactory, they possess all the qualifications laid down in the relevant
10 scheme of service and recommended them for promotion. The Director of the Department added that some Reporting Officers assessed certain candidates as “excellent” and “very good”. In spite of this, the Director added that he believed that Mr. G. Phinikarides was superior to other
15 candidates who have been assessed as “excellent”.

20 According to the relevant scheme of service, candidates for appointment to the post of Technical Assistant, 1st Grade, must possess ‘a good knowledge of English’. Having regard to the long and satisfactory service in the Government of Messrs. Athos Koundouris, George Phinikarides, Andreas Christoforides and Stavros Constantinou, as well as to their educational qualifications, the Commission was satisfied that the officers in question did possess ‘a good knowledge of English.’

25 After considering the above and after taking into consideration all the facts appertaining to each one of the officers serving in the post of Technical Assistant, 2nd Grade, and after giving proper weight to the merits, qualifications, seniority, service and experience of these candidates, and having regard to the views expressed as well as
30 to the recommendations made by the Head of Department, the Commission came to the conclusion that the following officers were on the whole the best. The Commission accordingly decided that the officers in question be seconded
35 to the temporary (Dev.) post of Technical Assistant, 1st Grade, w.e.f. 1.4.77:

40 Athos Koundouris
George Phinikarides
Andreas Christoforides
Stavros Constantinou.”

The grounds of law relied upon by the applicant, are in effect the following:

- (a) That the respondent Commission failed in its duty to select the candidate most suitable for the post, particularly so in view of the fact that the applicant has better qualifications, seniority, longer service and better confidential reports; and 5
- (b) That no proper inquiry was carried out with regard to the possession by the interested parties and in particular interested party Phinikarides, of the qualifications required under the scheme of service and particularly so, in view of the fact that he had attended secondary education for four years only, which brought him within the proviso of the scheme of service and the respondent Commission had consequently to be satisfied that he had "a general education of a standard equal to that of a five year secondary school". 10 15

The examination of the careers of the applicant and the interested parties as appearing in their personal files and confidential reports are relevant for the exercise of judicial control on an administrative decision of the nature of the one under examination. 20

The applicant, a graduate of the Pancyprian Gymnasium attended also for a year the American Academy for Girls and passed the English Lower and Greek Higher examinations of the C.C.E. She also passed the Departmental Examinations for promotion to the post of Technical Assistant 1st Grade in 1968. 25

She was first appointed in the service on the 19th January, 1957 but in May, 1960, her services were interrupted in view of advanced stage of pregnancy as then required by section 11/1.45 of the General Orders. She was re-employed on weekly basis on the 10th October, 1960, as Technical Assistant, until the 31st July, 1963, when she was appointed to the temporary post of Technical Assistant 2nd Grade, in the Department of Public Works, and on the 1st February, 1969 she was appointed to the permanent post. 30 35

Interested party Koundouris had a five-year secondary education; he attended for three years (1959-1962) the Athens

Technological Institute, passed the English Lower C.C.E., and the Departmental Examinations for promotion to the post of Technical Assistant 1st Grade in 1968. He was first employed in the Public Works Department in the Senior Architect's office in July, 1962 and on the 1st July, 1963, he was appointed to the permanent post of Technical Assistant 2nd Grade.

Interested party Phinikarides, had a four-year secondary education; he completed a correspondence course with the Royal Institution of Chartered Surveyors of London, and passed the Departmental Examinations for promotion to the post of Technical Assistant, 1st Grade in 1968. He was first appointed as draftsman on weekly basis in the Public Works Department in June, 1957 and on the 1st July, 1963 he was appointed to the permanent post of Technical Assistant, 2nd Grade.

Interested party Christoforides is a graduate of the High Commercial Lyceum of Nisosia, he attended for three years (1952-1962) the Athens Technological Institute and passed the Departmental Examinations for promotion to the post of Technical Assistant 1st Grade in 1968. He was first employed as a Technical Assistant on daily wages on 18.7.1962 and on the 1st July, 1963 he was appointed to the permanent post of Technical Assistant, 2nd Grade.

Interested party Constantinou is a graduate of the Pancyprrian Lyceum, Larnaca, he attended for three years (1959-1962) the Athens Technological Institute, and passed the English Lower C.C.E. and the Departmental Examinations for promotion to the post of Technical Assistant 1st Grade in 1968. He was first employed on daily wages as a Technical Assistant on the 18th July, 1962 and on the 1st July, 1963 he was appointed to the permanent post of Technical Assistant 2nd Grade.

The picture in respect of the applicant and the interested parties should be completed by a reference to the contents of the confidential reports and at that, to those of the last three years as being the most recent ones, without this meaning that the previous ones have no bearing in the case, as in examining the merits of candidates, their whole career is material.

In the 1974 report, the applicant is rated as excellent in two ratable items and very good in the remaining. For the year 1975, a special confidential report was made and she is rated

as excellent and very good. The reason given for submitting such a report, is that her output and efficiency had improved tremendously in the preceding years and it was observed that she possessed valuable technical experience because she had been working in that capacity for about 20 years. The action recommended to be taken was that she should be promoted to Technical Assistant, 1st Grade without further delay. A special confidential report on the same lines and with the same recommendations was made on the applicant for the year 1976. 5

Interested party Koundouris has had special confidential reports since 1970. The reason given for submitting a special confidential report in 1974 is that he had performed his duties in the period under review in a very satisfactory manner and and that he is prompt and hard-worker. He is rated as very good and excellent on the ratable items and he is strongly recommended for promotion that being the action suggested to be taken thereafter. On the same lines are the contents of the two special confidential reports for the years 1975 and 1976. 10 15

Interested party Phinikarides has had special confidential reports made on him since 1969 continuously. The reason given for submitting a special confidential report for 1974 was that he was overdue for promotion. He is rated as very good in most ratable items, in the said report and excellent on matters of accuracy, courtesy in dealing with the public and ability to co-operate with colleagues. The action recommended to be taken was that he be promoted the soonest to Technical Assistant, 1st Grade. Special confidential reports along the same lines were made for the years 1975 and 1976 and the reason given for submitting a special confidential report for 1976 was that his service in the last few years has been outstanding. 20 25 30

Interested party Christoforides has had his first special confidential report for the year 1971. For the year 1974 the reason given for making same was that his promotion to Technical Assistant, 1st Grade, was overdue. He is rated therein as very good and excellent and the action recommended to be taken thereon is promotion to the said post. Similar are the reports for the years 1975 and 1976. 35

Interested party Constantinou had the first confidential report made on him in the year 1969 and he was likewise reported upon 40

ever since. The reason given for submitting one in 1974 is that he was performing the duties of a Technical Assistant, 1st Grade since 1968 with great success and that he deserved promotion to the post of Technical Assistant, 1st Grade, and that
5 was also the action recommended to be taken. He is rated as very good and excellent and along the same lines is the report for the year 1976 and the action recommended to be taken thereupon is that he should be promoted without any further delay.

10 It should be observed that in respect of the applicant, interested party Phinikarides and interested party Christoforides, both the reporting and the countersigning officers are the same, namely, Mr. Iordanou, a senior engineer and Mr. Symeonides, the Director of the Department of Public Works, whereas,
15 in the case of interested party Koundouris and interested party Constantinou, there are different reporting officers, but for both the countersigning officer is again the Director.

The outline given, reveals a picture of the merits, qualifications and seniority of each candidate that the respondent Commission had before it when taking the *sub judice* decision and
20 also constitutes the background for the recommendations made in respect of the promotions in question by the Head of the Department in which the vacancies existed.

In my view, there does not exist any marked difference on
25 the merits, and experience of all candidates; if anything, the balance leans in favour of the interested parties, if one looks at the repeated special confidential reports made on them and their contents, coupled with the recommendations of the Head of the Department made for this purpose.

30 With regard to their qualifications, it is true, that the applicant is a graduate of a six-year secondary school, as compared with interested party Phinikarides who attended a secondary school for four years and interested party Koundouris who had only five years' secondary education. Phinikarides, however,
35 took a correspondence course with the Royal Institution of Chartered Surveyors of London in the years 1957-1958 and the other three interested parties attended the Athens Technological Institute for three years.

Seniority, under section 46(1) of the Public Service Law,

1967 between officers holding the same office is determined by the effective date of appointment or promotion to that particular office or grade.

In the present case, even if I were to ignore the fact that the applicant was appointed to the permanent post of Technical Assistant, 2nd Grade on the 1st February, 1969, whereas all interested parties were appointed to the same permanent post on the 1st July, 1963 and treat her appointment to the temporary post as if there was no substantial difference, again, that appointment of the applicant, was made a month after the permanent appointment of the interested parties. Moreover and considering the interruption of her service and her re-employment under section 46 (6) the seniority of an officer who is re-appointed to the same office after a break of service shall, subject to the other provisions of this section and of any other law, be determined by the effective date of his re-appointment. Therefore, the recommendation by the Council of Ministers for the purpose of pension, regarding the service of women civil servants whose service was interrupted on account of pregnancy before the establishment of the Republic, does not affect her seniority, in the circumstances.

Considering, therefore, the totality of all relevant circumstances, the *sub judice* decision was, in my view, reasonably open to the respondent Commission. It was a selection for promotion on merit, qualifications and seniority and the respondent Commission did not fail in their paramount duty to select the candidates most suitable for the post in question and this Court, as it has been 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 had 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* (1970) 3 C.L.R. 257 at p. 263). The *sub judice* decision was duly warranted by the material in the file and the recommendations of the Head of the Department.

It remains now to consider whether the respondent Commission has carried out a proper inquiry with regard to the qualifications of the interested parties and at that, of interested party Phinikarides who had only a four-year secondary education; in that respect, the Commission had to be satisfied that he came

within the exemption permitted under the relevant scheme of service.

In this respect, the respondent Commission referred in its minute to the fact that the post of Technical Assistant, 5 1st Grade, is a promotion post for officers serving in the lower post of Technical Assistant, 2nd Grade and stated that "candidates must possess a leaving certificate of a six-year secondary school and must have, *inter alia*, five years' satisfactory service in the post of Technical Assistant, 2nd Grade or two years' 10 satisfactory service, coupled with a certificate from a recognised Higher Technical School. They must also have a good knowledge of English and must have passed the Departmental Examinations". It went on to say that it considered the merits, qualifications, seniority, service and experience of all the officers 15 serving in the post of Technical Assistant, 2nd Grade, as reflected in their personal files and their annual confidential reports. Moreover, the Director of the Department of Public Works is quoted to have stated that all interested parties "possess all qualifications laid down in the relevant scheme of service" 20 and the respondent Commission after dealing with one aspect of the required qualifications, namely, the good knowledge of English found that all interested parties did possess the said qualification, having regard to their satisfactory service in the Government, as well as to their educational qualifications. It 25 referred, again, to their qualifications in the concluding paragraph of their minute.

Moreover, in the scheme of service for the post of Technical Assistant 2nd Grade, as published under Notification No. 266 30 to the official Gazette of the Republic, No. 237 of the 14th March, 1963, there exists an identical note of exemption as the one in the scheme of service for the post of 1st Grade.

Interested party Phinikarides who had not graduated a six-year or five-year secondary school was found, on the strength of his qualifications, to qualify for the post as possessing a 35 general knowledge of a standard deemed as equivalent to the standard of a five-year secondary school. It would have been therefore, superfluous to make any more specific reference to the standard of education of a candidate after 15 years of satisfactory service and question whether his secondary school 40 education did not meet the requirements of service. It was

sufficient, in the circumstances, to say that an interested party as Phinikarides possessed the required qualifications under the scheme for the post of 1st Grade.

Before concluding, however, I would like to observe, in all fairness to the applicant, that the task of the respondent Commission in arriving at the *sub judice* decision must have been a difficult one, in view of the applicant's merits and experience. 5

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

Application dismissed. 10

No order as to costs.