

1978 November 3

[A Loizou, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PANAYIOTIS ANTONIOU,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent

(Case No 214/77)

*Administrative Law—Administrative organ—Due and proper inquiry—
Failure to make—A ground of annulment—Promotions in the
Public Service—Public Service Commission failing to make a due
inquiry into the question of whether applicant possessed the alter-
native qualifications under the schemes of service—Sub judice 5
promotion annulled.*

*Public Officers—Promotions—Qualifications—Scheme of service re-
quiring leaving certificate of a six-year secondary school—Provi-
sion for alternative qualifications under an exception to the scheme
—Applicant not possessing said certificate—No due inquiry by 10
the Commission into the question of whether applicant possessed
the alternative qualifications—Sub judice promotion annulled*

The applicant in this recourse challenged the validity of the
decision of the respondent Commission by means of which it
promoted to the permanent post of Airport Assistant, 2nd Grade, 15
in the Department of Civil Aviation, the seven interested parties,
instead of himself.

Though under the relevant scheme of service candidates must,
inter alia, be in possession of a leaving certificate of a six-years'
secondary school, under an exception thereto public officers who 20
had been appointed in the Public Service before the 1st De-

5 cember, 1961 either under a permanent or temporary capacity and/or those in the Public Service on a monthly basis on the 1st February, 1968, could be treated as eligible if they possessed a leaving certificate from a five-year secondary school or other equivalent qualification, or, though not possessing such school leaving certificate or qualification, had general education of a level considered as equivalent to the level of a five-year secondary education school.

10 It was not in dispute that the applicant was in the Public Service before the 1st December, 1961 and he was in the service on a monthly basis on the 1st February, 1968.

15 When the Public Service Commission met to consider the filling of the above post it stated in its minutes* that the applicant and other candidates "forwarded in December, 1973, photocopy of a Certificate in which it was stated that they had completed the full-time course (*i.e.* a six-year course) of the English School, Morphou. The question of the School Leaving Certificate of the above officers was examined by the Commission in the past and full details showing how the officers in question had obtained these Certificates may be seen in the relevant minutes of the Commission of 19.2.74". The Commission further stated that in view of the explanations referred to in the aforesaid minutes, it had decided at that time that the school leaving certificate possessed by the applicant and the other candidates should not be accepted and consequently they could not be considered as possessing the necessary qualifications for promotion.

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35 Counsel for the applicant contended that the respondent Commission failed to carry out a due and/or proper inquiry for the purpose of ascertaining whether the applicant possessed the required qualifications under the scheme of service in the sense that having decided that he did not possess a leaving certificate of a six-year secondary school, they failed to examine whether he satisfied any of the alternative qualifications set out in the said exception to the scheme.

Counsel for the respondent conceded the above point.

Held, annulling the sub judice decision, (1) that the failure of

* See the relevant text of the minutes at pp. 311-12 *post*.

an administrative organ to make a due and/or proper inquiry is a ground for annulment, this ground having been treated by this Court in many cases as an independent ground of annulment, sufficient by itself or on the ground that it constitutes an incorrect reasoning of an administrative decision which is also a ground of annulment (see *Ioannides v. The Republic* (1972) 3 C.L.R., p. 318, at p. 326). 5

(2) That though the question whether the applicant possessed any of the alternative qualifications under the scheme of service was examined when in 1974 questions of promotion were decided by the respondent Commission yet it cannot be concluded that the need of due inquiry regarding these alternative qualifications no longer exists, because and on account of that inquiry having been carried out then; that as the applicant was in the service before the 1st December, 1961 and he was in the public service on a monthly basis on the 1st February, 1968 it had to be examined if he satisfied or not the remaining qualifications which does not appear from the minutes of the respondent Commission to have been done in the instant case; and that, accordingly, the *sub judice* decision will be annulled. 10 15 20

Sub judice decision annulled.

Cases referred to:

Ioannides v. The Republic (1972) 3 C.L.R. 318 at p. 326.

Recourse.

Recourse against the decision of the respondent to promote the interested parties to the post of Airport Assistant, 2nd Grade, in the Department of Civil Aviation, in preference and instead of the applicant. 25

A. S. Angelides, for the applicant.

R. Gavrielides, Counsel of the Republic, for the respondent. 30

Cur. adv. vult.

A. LOIZOU J. gave the following judgment. The applicant by the present recourse challenges the validity of the decision of the respondent Commission by which it promoted to the permanent post of Airport Assistant, 2nd Grade, in the Department of Civil Aviation, with effect from the 1st April, 1977, Andreas Aristodemou, Gregoris Pitharas, Christodoulos Panteli, Alexandros Nicolaidis, Vassos Georghiou, Christakis Shekeris and Andreas Mitas, instead of himself. 35

According to the scheme of service (enclosure No. 3), the said post is a promotion one from the immediately lower post of Airport Assistant, 3rd Grade. Regarding the required qualifications an exception was made for public officers:

- 5 (a) Appointed in the Public Service before the 1st December, 1961, either under a permanent or temporary capacity and/or
- 10 (b) Those in the the Public Service on a monthly basis on the 1st February, 1968. In such cases officers possessing a leaving certificate from a five year secondary school or other equivalent qualification, or, though not possessing such school leaving certificate or qualification, have general education of a level considered as equivalent to the level of a five year secondary
- 15 education school, could be treated as eligible, provided they possessed the remaining qualifications required by the scheme.

20 An examination of the approach of the respondent Commission by reference to the minutes of its meeting at which the sub judice decision was reached is essential; in so far as relevant to the determination of this recourse they read:-

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25 Under the relevant scheme of service candidates must have, *inter alia*, satisfactory service and at least three-years' experience in the post of Airport Assistant, 3rd Grade. In addition, candidates must be in possession of a Leaving Certificate of a Six-years' Secondary School, a Certificate in First Aid and they must have passed the Departmental Exams. They must also possess a good knowledge of English.

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30 The Commission observed that Messrs. M. Petrides, E. Constantinou, P. Barberis and P. Antoniou forwarded in December, 1973, photocopy of a Certificate in which it was stated that they had completed the full-time course (i.e. a six-year course) of the English School, Morphou.

35 The question of the School Leaving Certificates of the above officers was examined by the Commission in the past and full details showing how the officers in question

had obtained these Certificates may be seen in item 1 of the relevant minutes of the Commission of 19.2.74. In view of the explanations referred to in the aforesaid minutes, the Commission had decided at that time that the School Leaving Certificates possessed by the above four candidates should not be accepted. Consequently the candidates in question cannot be considered as possessing the necessary qualifications for promotion. 5

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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, seniority, service and experience of these candidates, and having regard to the views expressed as well as to the recommendations made by the Head of the Department, the Commission came to the conclusion that the following candidates were on the whole the best. The Commission accordingly decided that the officers in question be promoted to the permanent post of Airport Assistant, 2nd Grade, w.e.f. 1.4.77: Andreas Aristodemou, Gregoris Pitharas, Christakis Shekeris, Alexandros Nicolaidis, Vassos Georghiou, Christodoulos Panteli, Andreas Mitas.” 10 15 20

It has been the contention of counsel for the applicant that the respondent Commission failed to carry out a due and/or proper inquiry for the purpose of ascertaining whether the applicant possessed the required qualifications under the scheme of service in the sense that having decided that he did not possess a leaving certificate of a six year secondary school, they failed to examine whether he satisfied any of the alternative qualifications set out in the note in the scheme. 25 30

In fact, counsel for the respondent Commission has conceded this point but the responsibility for annulling an administrative decision remains exclusively in this Court in the exercise of its administrative jurisdiction under Article 146 of the Constitution. It is correct to say that the failure of an administrative organ to make a due and/or proper inquiry is a ground for annulment, this ground having been treated by this Court in many cases as an independent ground of annulment, sufficient by itself or on the ground that it constitutes an incorrect reasoning of an 35

administrative decision which is also a ground of annulment (see *Constantinos Ioannides v. The Republic* (1972) 3 C.L.R., p. 318, at p. 326).

5 In the case in hand, though the question whether the applicant possessed any of the alternative qualifications under the scheme of service, was examined when in 1974 questions of promotion were decided by the respondent Commission (see the applicant's personal file, red. 36), yet I cannot conclude that the need of
10 due inquiry regarding these alternative qualifications no longer exists, because and on account of that inquiry having been carried out then. It is not in dispute that the applicant was in the service before the 1st December, 1961, and he was in the public service on a monthly basis on the 1st February, 1968. That being so, it had to be examined if he satisfied or not the
15 remaining qualifications which does not appear from the minutes of the respondent Commission to have been done in the instant case.

In the result, therefore, the sub judge decision is annulled but in the circumstances I make no order as to costs.

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*Sub judge decision annulled.
No order as to costs.*