

1978 December 15

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS IOANNIDES,

Applicant,

v.

THE CYPRUS BROADCASTING CORPORATION,

Respondent.

(Case No. 235/76).

Public officers—Promotions—Schemes of service—Interpretation by administrative organ—Principles on which Court intervenes.

Administrative Law—Administrative decision—Due reasoning—Collective organ—Member thereof abstaining at voting—But not giving reasons for his abstention—Sub judge decision a duly reasoned one.

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Public officers—Promotions—Administrative Assistant in the Cyprus Broadcasting Corporation—Both applicant and interested party serving in the corporation at different posts—And both found suitable for above post by Advisory Selection Committee—Interested party with five years' longer service with the Corporation and recommended by Director General—Confidential reports not disclosing striking superiority in favour of the applicant—Sub judge decision reasonably open to the respondents on the material before them—Applicant has failed to satisfy Court that he was an eligible candidate strikingly superior to the interested party.

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The applicant in this recourse challenged the validity of the decision of the Board of the respondent Corporation to promote the interested party to the post of Administrative Assistant in the Corporation.

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The applicant graduated from the Pancyprian Gymnasium in the year 1955 and enrolled in 1955 with the High School of Economics and Commercial Sciences in Athens but withdrew

two years later having passed all the subjects of the first year, except the subjects of economics, mathematics, and general mathematics. He has a certificate, class II in book-keeping, and attended the Pitman's College of London for two years and
5 passed the examinations at an intermediate stage in English, business letters, commerce, mathematics and book-keeping. He also attended in October 1968 a series of lessons in the Productivity Centre of Cyprus. He worked as an Accountant Treasurer of the School Committee of Nicosia and entered the
10 service of the respondent Corporation in the Accounts Department in August 1965 on a temporary basis. He was permanently appointed to the post of Clerk 1st grade in the Department of administration in November, 1967, which post was renamed in 1970 as one of Administrative Clerk.

15 The interested party attended the English School of Morphou and the Paphos College, from which he graduated in 1950. He passed the English and Greek higher examinations of the Cyprus Certificate of Education and has the Higher Commercial Education Certificate in Accounting, of the London Chamber of Commerce. He worked as a supplies officer in the
20 Ministry of Works, Assistant of the Chief Accountant of "ESSO" company and entered the service of the respondent Corporation in May 1960 as an Accounts Clerk grade I, and was promoted to the post of Senior Accounting Officer in September, 1968.
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The qualifications required under the relevant scheme of service were a high standard of education, not below that of a Secondary School education, a very good knowledge of Greek and English and long and satisfactory experience in office
30 administration and secretarial work preferably in a large establishment.

The confidential reports did not disclose any striking superiority in favour of the applicant.

35 The *sub judice* decision was taken after the Board had examined in detail the case of each candidate and had taken into consideration a report of the Advisory Selection Committee and a memorandum by the Director General. A member of the Board (Mr. Manolis Christofides) abstained at the voting, but stated that he did not wish to give reasons for his absten-
40 tion.

The report of the Advisory Committee, which had interviewed the candidates, stated that the applicant and the interested party "performed satisfactorily at the interview and are considered suitable for the filling of the post of administrative assistant"; and the memorandum of the Director General stated that both the applicant and the interested party were found suitable for the post by the Advisory Selection Committee and that the more senior in the service was the interested party. The memorandum further gave details of the career of the two candidates with the respondent Corporation and after stating that the applicant was performing partly certain duties of Administrative Assistant it concluded by recommending that, on the basis of all factors, namely the academic qualifications, the experience, the oral interview and the whole service with the Corporation, the interested party be appointed to the post of Administrative Assistant.

Counsel for the applicant mainly contended:

- (a) That the *sub judice* decision is not duly reasoned because the views expressed by a member of the respondent Board (Mr. Manolis Christofides), have not been recorded in the minutes.
- (b) That the interested party does not possess the required qualifications pursuant to the schemes of service in that he does not have long and satisfactory experience in secretarial work.
- (c) That the respondent Corporation failed to perform its paramount duty of selecting the best candidate for the post in that it disregarded applicant's striking superiority of qualifications, merit and experience without cogent reasons.

Held, (1) that the fact that the member of the Board, who abstained at the voting, did not ask for any reasons to be recorded regarding his abstention does not in any way render the *sub judice* decision as not duly reasoned.

(2) That provided the interpretation given to a scheme of service is a reasonable one on the basis of its wording, this Court in deciding whether or not the appropriate administrative organ had conformed with it would not give such scheme

5 a different interpretation (see *Papapetrou v. The Republic*, 2 R.S.C. 61); and that though this Court does not disagree with Mr. Neocleous, an expert in this field, who testified more on the academic character of secretarial work rather than the nature of such work as understood within the structure of the respondent Corporation, it has not been persuaded that there has been an unreasonable interpretation of the relevant scheme or a wrong application of same in this respect.

10 (3) That the totality of the circumstances should be examined including the recommendation of the Director General and the five years' longer service of the interested party with the respondent Corporation; that on the material before the respondent Corporation, the *sub judice* decision was reasonably open to them; that they in no way failed in their paramount duty to select the candidate most suitable for the post in question, nor did they fail in carrying out a proper inquiry and the applicant has failed to satisfy this Court that he was an eligible candidate strikingly superior to the interested party, a burden which he had to discharge in this case; and that, accordingly, this
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20 recourse will be dismissed.

Application dismissed.

Cases referred to:

Papapetrou v. The Republic, 2 R.S.C.C. 61.

Recourse.

25 Recourse against the decision of the respondent to promote the interested party to the post of Administrative Assistant in preference and instead of the applicant.

A. Paikkos with *E. Lemonaris*, for the applicant.

K. Chrysostomides, for the respondent.

30 *P. Ioannides*, for the interested party.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recourse the applicant prays for a declaration that the act or decision of the respondent Corporation to appoint and or
35 promote Andreas P. Zodhiades (hereinafter to be referred to as the "interested party") to the post of Administrative Assistant, in preference and instead of the applicant is *null* and *void* and of no effect whatsoever.

The application is based on the following grounds of Law:

- “ 1. The person appointed does not possess the required qualifications pursuant to the schemes of service *i.e.* he does not have long and satisfactory experience in secretarial work and therefore respondents acted contrary to law and in abuse of powers. 5
2. The respondents failed in their paramount duty to select the best candidate, enunciated by the Supreme Constitutional Court in the case of *Michael Theodossiou v. The Republic*, 2 R.S.C.C. 44, and thus they acted contrary to law and in abuse of powers. 10
3. The respondents acted in violation of reg. 5 of the Cyprus Broadcasting Corporation Regulations regarding the Selection Committee for the filling of vacancies in the corporation 1972 in that they disregarded offences committed by the interested party coming within the scope and ambit of regulation 5. 15
4. The respondents disregarded the strikingly superior qualifications, merit and experience of the applicant without cogent reasons, thus failing in their paramount duty to select the best candidate and acting contrary to law and in abuse of powers. 20
5. The respondents failed to hold the necessary enquiry for ascertaining material facts, *i.e.* offences committed by the interested party within the period of time stipulated by reg. 5 of the aforesaid Regulations and furthermore they failed to obtain a report from applicant’s Head of Department regarding merits and suitability for promotion to the said post. 25
6. Respondent’s decision is not duly reasoned inasmuch as the views expressed by Mr. Manolis Christofides, a member of the Board which decided the promotion have not been recorded on the minutes.” 30

The applicant graduated from the Pancyprian Gymnasium in the year 1955 and enrolled in 1955 with the High School of Economics and Commercial Sciences in Athens but withdrew two years later (see red 18(c) in *exhibit* 6) having passed all the subjects of the first year, except the subjects of economics, 35

mathematics, and general mathematics. He has a certificate, class II in book-keeping, and attended the Pitman's College of London for two years and passed the examinations at an intermediate stage in English, business letters, commerce, mathematics, book-keeping (see red 18(a) in *exhibit* 6). He also attended in October 1968 a series of lessons in the Productivity Centre of Cyprus (see reds 66, 69, 71). He worked as an Accountant Treasurer of the School Committee of Nicosia and entered the service of the respondent Corporation in the Accounts Department in August 1965 on a temporary basis. He was permanently appointed to the post of clerk 1st grade in the department of administration in November, 1967, which post was renamed in 1970 as one of administrative clerk.

The interested party attended the English School of Morphou and the Paphos College, from which he graduated in 1950. He passed the English and Greek higher examinations of the Cyprus Certificate of Education and has the Higher Commercial Education Certificate in Accounting, of the London Chamber of Commerce. He worked as a supplies officer in the Ministry of Works, Assistant of the Chief Accountant of "ESSO" company and entered the service of the respondent Corporation in May 1960 as an Accounts Clerk grade I, and was promoted to the post of Senior Accounting Officer in September, 1968.

The duties and responsibilities of the post of Administrative Assistant as set out in the relevant scheme of service, *exhibit* 1, are the following: To be responsible for the central Registry and archives of the Corporation and the stationery store. To supervise Administration staff and generally to assist the Deputy Director General in the administrative business of the Corporation. To be Secretary of the Advisory Selection Committee and the Corporation's security and fire officer. In the performance of his duties he will be directly responsible to the Deputy Director General. The required qualifications are a high standard of general education, not below that of a Secondary School Education. A very good knowledge of Greek and English. Long and satisfactory experience in office administration and secretarial work preferably in a large establishment.

Following the established procedure applications for the post of Administrative Assistant were invited and nine persons in all applied. After examining these applications in con-

junction with the qualifications required by the scheme of service, the Advisory Selection Committee ascertained that a number of candidates, though possessing the required academic qualifications, did not possess the necessary under the scheme of service “long and satisfactory experience in the office administration and secretarial work, preferably in a large establishment”. The Committee then decided to invite four of them, among which, the applicant and the interested party for examinations, stating also at the same time that the senior officers, from the accounts department, who were candidates, were considered as satisfying the aforesaid requirement of the scheme of service. Subsequently this Advisory Selection Committee interviewed the four candidates, one of them withdrew his candidature, and the Committee unanimously came to the conclusion that at the interview another candidate did not perform satisfactorily and in the light of all the circumstances he was not considered suitable for the post. So there remained the applicant and the interested party.

The concluding paragraph of the relevant minute, *exhibit 2*, reads as follows: “In the unanimous judgment of the Committee the applicants Zodiades Andreas and Ioannides Andreas performed satisfactorily at the interview and are considered suitable for the filling of the post of administrative assistant”.

It may be pointed out here that this Selection Committee was composed of the Director General, the Assistant Director General, the Director of the Technical Services and three representatives of the Trade Union of the employees of the respondent Corporation.

A memorandum prepared by the Director General on the subject of promotions and appointments (*exhibit 4*) was placed before the Board of the respondent Corporation which considered the sub judice promotions at its meeting of the 27th July, 1976. The Director General pointed out in the said memorandum that both the applicant and the interested party were found suitable for the post by the Advisory Selection Committee, that the more senior in the service was the interested party, and apart from other details as to his post, his salary at the time was stated to be £1,664 per annum. The applicant’s appointment and career with the respondent Corporation was also referred to therein and that his salary at the time was

£1,422 per annum and that the salary for the post of Administrative Assistant was on the scale of £1,636-£2,266. He mentioned that the applicant was performing partly certain duties of the Administrative Assistant after another officer left the service and he concluded by saying "On the basis of all factors, namely the academic qualifications, the experience, the oral interview and the whole service with the Corporation, suggestion is made that Mr. Andreas Zodiades be appointed to the post of Administrative Assistant".

10 The Board of the respondent Corporation according to its minute, *exhibit 3*, said "After examining in detail the case of each one of the candidates for this post and after studying and taking into consideration the report of the Advisory Selection Committee as well as the memorandum of the Director General of the 26th July, 1976 on the subject, and after oral clarifications from the Director General, considered as more suitable for the post of Administrative Assistant Mr. Andrea Zodiade, whom it appoints to this post. Mr. Manolis Christofides abstained at the voting, but stated that he did not wish to give reasons for his abstention".

Mr. Christofides, who was called as a witness on behalf of the applicant, stated in evidence before me that as he had heard "something about money" in relation to the interested party he asked the Director General for clarifications which were given by him, hence the reference in the minutes *exhibit 3*, about "oral clarifications from the Director General".

The evidence of Mr. Christofides is useful in another respect also, as it reveals that the personal files and all other documents were duly examined by the members of the Board and a necessary inquiry for the ascertainment of material facts was indeed carried out. The fact that Mr. Christofides did not ask for any reasons to be recorded regarding his abstention does not in any way render the sub judice decision as not duly reasoned. This in effect disposes of ground of Law No. 6. It is also convenient whilst at this point to deal with part of grounds 3 and 5 which contain the assertion that offences were committed by the interested party within the period of time stipulated by regulation 5 of the Regulations of the respondent Corporation and that they failed to obtain a report from the applicant's Head of Department regarding merits and suitability for promotion to the said post. On this latter point learned counsel

for the applicant urged that a report should have been obtained from Mr. Hadjiosif who was the applicant's head of department and knew him better. This does not appear to be based on any rule or regulation, but it should be pointed out that Mr. Hadjiosif was a member and participated in the work of the Advisory Selection Committee as stated in its minutes of the 3rd March, 1976, *exhibit 2*. 5

On the question of the alleged offence the facts appear to be very simple. The interested party was responsible for the keeping of the account of the respondent Corporation with the Bank of Cyprus, under No. A. 77. The interested party kept a personal account also with the same bank under No. A. 141. 10

On the 28th August, 1967 the interested party wrote to the Central Bank of Cyprus regarding deposit No. 393 for £30,000 requesting that the sum of the said deposit be transferred on maturity to the "current account" of the Cyprus Broadcasting Corporation No. 141 with the Bank of Cyprus, Makarios Avenue III and attached thereto the relevant deposit certificate. This was a letter (red 83, in *exhibit 7*) with the Corporation's heading. According to the evidence of Mr. Christoforos Iosif called on behalf of the applicant, an employee of the Bank of Cyprus, at the said branch, the discrepancy was noticed at the time and inquiries were made with the Central Bank, the account number was rectified and the deposit lodged in the right account. 15
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It is an obvious oversight which was never treated as amounting to any offence at all and I am sure learned counsel had the disadvantage of acting on insufficient information when drafting the grounds of Law for the applicant. In fairness to him I must say that he eventually only used it as being material of adverse nature contained in the personal file of the interested party as compared with that of the applicant which did not contain such material. 30

This disposes of grounds 3 and 5 and the Laws relied upon by applicant. 35

Reverting now to the first ground of Law relied upon by the applicant to the effect that the interested party does not possess the required qualification of long and satisfactory experience in secretarial work I need only say that provided the interpretation

given to a scheme of service is a reasonable one on the basis of its wording, this Court in deciding whether or not the appropriate administrative organ had conformed with it would not give such scheme a different interpretation. (See *Papapetrou v. The Republic*, 2 R.S.C.C. p. 61).

5 Evidence was called on this point on behalf of the applicant for the purpose of explaining in general what is meant by secretarial work. I do not disagree with Mr. Neocleous, an expert in this filed, who testified more on the academic character of
10 such work rather than the nature of such work as understood within the structure of the respondent Corporation. I have not been persuaded that there has been an unreasonable interpretation of the relevant scheme or a wrong application of same in this respect. This ground of Law therefore also fails.

15 It remains to consider grounds 2 and 4 taken together with regard to the alleged failure of the respondent Corporation to perform its paramount duty of selecting the best candidate for the post and the disregard of the applicant's striking superiority of qualifications, merit and experience, and at that without
20 cogent reasons.

In this respect relevant are in addition to the qualifications seniority and experience of the candidates the contents of the confidential reports, a perusal of which does not disclose any striking superiority in favour of the applicant.

25 The totality of the circumstances should be examined including the recommendation of the Director General and the five year longer service of the interested party with the respondent Corporation. On this material before the respondent Corporation, the sub judice decision was reasonably open to it.
30 They in no way failed in their paramount duty to select the candidate most suitable for the post in question, nor did they fail in carrying out a proper inquiry and the applicant has failed to satisfy me that he was an eligible candidate strikingly superior to the interested party, a burden which he had to
35 discharge in this case.

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.*