

1979 June 23

[STAVRINIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANTONIOS EVGENIOU,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 349/68).

Public Officers—Appointments and promotions—First entry and promotion post—Assistant Official Receiver and Registrar—Officers serving in the Department concerned—Whether they have a superior claim to promotion over officers not so serving—Paramount duty of the Commission always the selection of the best candidate—
5 “Knowledge of, and, preferably, some experience in, the relevant legislation” in the scheme of service—Whether possessed by someone who has read law—Confidential reports—Prepared by different officers—Weight—Fact that they were so prepared not overlooked—
10 “Manifest superiority”—Not necessary as a ground of selection by the Commission, but only as a ground for interfering with its passing over an officer having seniority over one who has been preferred—Commission not decisively influenced by respective legal qualifications of applicant and the appointee—
15 An administrative Court can only interfere on one of the recognised grounds and cannot substitute its own view for the decision of the administration—Recourse dismissed.

20 The applicant and the appointee were candidates for the post of Assistant Official Receiver and Registrar, a first entry and promotion post. The applicant held the post of Examiner in the Department of the Official Receiver and Registrar, while the appointee was a Registrar, 1st Grade, in the Judicial Department. The qualifications required under the relevant scheme of service* were as follows: “An advocate enrolled under the

* Quoted in full at pp. 243–4 *post*.

Advocates Law with knowledge of, and, preferably, some experience in, the relevant legislation. Faultless knowledge of the Greek and English languages or the Turkish and English languages and knowledge of commercial accountancy.....”.

The respondent Public Service Commission found that the appointee’s performance at the interview was much better than that of the applicant and that his annual confidential reports were better. In the relevant minutes* of the Commission it is, *inter alia*, stated that

“ The Commission has also seen and considered their annual confidential reports. The difference between their respective reports, in the opinion of the majority, is manifest. Mr. A. Evgeniou is a graduate of the University of Athens whereas Mr. Constantinides is a Barrister at Law. The Official Receiver and Registrar stated that a person having the qualification of a Barrister at Law will be of a great help to the Department as all the Laws which he will have to deal with are based on the English laws and that such a candidate is more suitable for the post in question. The Official Receiver and Registrar, however, stated that he is in favour of Mr. Evgeniou on moral considerations as he has been in the Department for a long time”.

Eventually the Commission decided by 3 votes to 2 to appoint the appointee and hence this recourse.

Counsel for the applicant mainly contended:

- (a) That the appointee did not possess the required knowledge or any “experience” of the “relevant legislation”, nor any knowledge of “commercial accountancy”.
- (b) That the applicant had served in the Department of the Official Receiver for sixteen years, and other things being equal every officer has a superior claim to promotion to a post in his Department or Office.
- (c) That as the applicant and the appointee had been employed in different Departments and the respective confidential reports had been made by different officers

* See pp. 244-5 *post*.

no valid comparison of their respective merits could be made by the Commission.

(d) That if the appointee was "superior" then the superiority was not "manifest".

5 (e) That the majority of the Commission preferred the appointee because he had obtained his legal qualification in England, while the applicant had got his in Greece; and that this was wrong, because the applicant as well as being a law graduate of Athens University
10 "knew English quite well", had acted in the Department "for many years" and had passed the examination of the Statute Laws of Cyprus and therefore "should be able to be quite familiar with the relevant laws relating to the work of the Department".

15 With regard to contention (a) above the appointee produced a list* of Laws relating to the *sub judice* post and stated**, *inter alia*, that his knowledge of the said Laws is derived from a study of equity, which was one of the subjects of the Bar Final Examinations that he had passed; from the fact that in the course of his
20 service in the District Court he was filing bankruptcy notices and petitions and drawing up all kinds of orders under the Bankruptcy Law; and from the fact that for four years he has been the editor of the Cyprus Law Reports.

25 *Held*, (1) that the relevant legislation is such that anyone who has read law anywhere, and particularly in England, on whose laws that legislation is modelled, should have no difficulty in getting up the legal work of the Department; and that, accordingly, contention (a) must fail.

30 (2) That though every officer has a desire to obtain promotion, and when the desired post is in the Department in which he is serving he may be more or less ready to cope with the duties of the higher post, such consideration should not lead the Commission to treat such a Department as more or less closed to other officers and deflect it from selecting the best candidate,
35 which is its paramount duty; that the Commission has not overlooked the fact of the applicant's long employment in the De-

* Quoted in full at p. 246 *post*.

** See his evidence at pp. 246-7 *post*.

partment, for in its minutes there are two references to it; and that, accordingly, contention (b) above must fail.

(3) That there is no reason to suggest either that the Commission overlooked the fact that the confidential reports on the applicant and the appointee respectively had been made by different officers, or that they played a decisive part in the selection of the appointee; and that, accordingly, contention (c) must fail (*Georghiou v. Republic* (1977) 9-10 J.S.C. 1476, at p. 1483 considered).

(4) That "manifest superiority" is not necessary as a ground of selection by the Commission, but only as a ground for interfering with its passing over an officer having seniority over one who has been preferred; and that, accordingly, contention (d) must fail.

(5) That the minutes of the Commission simply record what the Official Receiver had said, and the majority's view thereon; that there is nothing to show that the majority had been decisively influenced by the respective legal qualifications of the applicant and the appointee; and that, accordingly, contention (e) must fail.

(6) That while one must feel for a party in the position of the applicant, who has served well in the Department to which the subject post belongs and has a natural claim for promotion, one must remember that an administrative Court can only interfere on one of the recognised grounds and is not to substitute its own view for the decision of the administration; and that, accordingly, the application must be dismissed.

Application dismissed.

Cases referred to:

Georghiou v. Republic (1977) 9-10 J.S.C. 1476 at p. 1483.

Recourse.

Recourse against the decision of the respondent to appoint Mr. Th. Constantinides to the post of Assistant Official Receiver and Registrar in preference and instead of the applicant.

A. *Triantafyllides*, for the applicant.

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

Cur. adv. vult.

STAVRINIDES J. read the following judgment. The applicant is seeking a declaration that

5 “ the decision of the respondents to appoint Mr. Theodou-
los Constantinides to the post of Official Assistant Receiver
and Registrar in preference to applicant is null and void and
of no effect whatsoever.”

At the time of the subject decision the applicant held the post of
Examiner in the Department of the Official Receiver and Re-
gistrar, while the appointee was Registrar, 1st Grade, in the
10 Judicial Department. The subject post is a first entry and pro-
motion post, and the relevant scheme of service is as follows:

“ Προσόντα και Εϋθϋναι:—

Βοηθεΐ εις την διεϋθυνσιν τουϋ Τμηματος και την εϋφαρμογην
της νομοθεσιϋς δια την οποιαν τουϋτο ειναι υϋπεϋθυνον και
15 αναπληροϋ τον 'Επισημον Παραληπτην και 'Εφορον οταν
απαιτηται. 'Εκτελει οιαδηποτε καθηκοντα ανατιθεμενα εις
αυτον υϋπο τουϋ 'Επισημου Παραληπτου και 'Εφορου. Ειναι
'Επισημος Παραληπτης δυναμει των περι Πτωχευσεως και
περι 'Εταιρειων Νωμων.

20 Προσόντα:—

Δικηγορος εγγεγραμμενος δυναμει τουϋ περι Δικηγορων
Νωμου, μετα γνωσεως και, κατα προτιμησιν, πειρας τινος της
σχετικης νομοθεσιϋς. 'Απταιστος γνωσις της 'Ελληνικης και
25 'Αγγλικης η της Τουρκικης και 'Αγγλικης και γνωσις εμπορι-
κης λογιστικης. Πρωτοβουλια και ικανοτης να φερεται μετ'
ευγενειας αλλα σταθεροτητος προς μελη τουϋ κοινοϋ και να
ελεγχη κατωτερον προσωπικον.”

(“Qualifications and Duties:

30 Assists in the direction of the Department and the applica-
tion of the legislation for which it is responsible and acts
for the Official Receiver and Registrar when required. Dis-
charges any duties entrusted to him by the Official Receiver
and Registrar. Is an Official Receiver under the Bank-
ruptcy and the Companies Laws.

35 Qualifications:

An advocate enrolled under the Advocates Law with
knowledge of, and, preferably, some experience in, the

relevant legislation. Faultless knowledge of the Greek and English languages or the Turkish and English languages and knowledge of commercial accountancy. Initiative and ability to treat members of the public with courtesy coupled with firmness and to control subordinate staff.”) 5

The applicant, the appointee and one other candidate were interviewed by the Public Service Commission (hereafter “the Commission”), and the minutes of that interview have been produced as an *exhibit* (No. 4). From these minutes it appears that that other candidate “proved much below the average standard of knowledge”. For the rest the minutes state: 10

“ 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.). 15

Mr. Constantinides’s performance at the interview was much better than that of Mr. Evgeniou. Mr. Koumas has proved at the interview much below the average standard of knowledge. The performance of Mr. A. Evgeniou was found by the majority of members (Chairman, Messrs. Lapas & Protestos) much less than the one expected of a man employed in the Department for such a long time. He has failed to give exact answers to some elementary questions. On the other hand Mr. Constantinides, in the opinion of the majority of the Commission, has given correct and considered answers to all questions put to him and generally he put up a perfect performance at the interview. Mr. Christodoulides confirmed the above. The questions were put by Mr. Christodoulides, the Official Receiver and Registrar, on legal and general matters with reference to the activities of the post of Assistant Official Receiver and Registrar. 20
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The Commission has also seen and considered their annual confidential reports. The difference between their respective reports, in the opinion of the majority, is manifest. Mr. A. Evgeniou is a graduate of the University of Athens whereas Mr. Constantinides is a Barrister at Law. The Official Receiver and Registrar stated that a person having the qualification of a Barrister at Law will be of a 35

5 great help to the Department as all the Laws which he will have to deal with are based on the English laws and that such a candidate is more suitable for the post in question. The Official Receiver and Registrar, however, stated that he is in favour of Mr. Evgeniou on moral considerations as he has been in the Department for a long time.

10 Messrs. Theocharis and Louca held the view that Mr. Evgeniou has more experience and has been working in the Department of the Official Receiver and Registrar for a long time. Mr. Constantinides may have better annual confidential reports but Mr. Evgeniou's reports are also good. No comparison can be made between the reports of these officers, as the officers in question are not doing the same work so as to be assessed on the same basis.

15 With regard to the qualifications of these officers, Messrs. Theocharis and Louca held the view that an officer who: (i) is a graduate of the University of Athens, (ii) knows English quite well, (iii) has been in the Department for many years and (iv) has passed the Cyprus Statute Laws
20 should be able to be quite familiar with the relevant laws relating to the work of the Department and that he should be appointed to this post.

25 In the opinion of the majority of the Commission (Chairman, Messrs. Lapas and Proestos) Mr. Constantinides is considered on the whole the best candidate for the post.

30 Bearing in mind the above, the Commission decided by 3 votes to 2 (Messrs. Theocharis and Louca dissenting) that Mr. Th. I. Constantinides be appointed to the post of Assistant Official Receiver and Registrar with effect from 15. 10. 68."

35 The main points made by learned counsel for the applicant, Mr. Triantafyllides, may be put thus: (a) the appointee did not possess the required knowledge or any "experience" of the "relevant legislation", nor any knowledge of "commercial accountancy"; (b) the applicant had served in the Department of the Official Receiver (hereafter "the Department") for sixteen years, and other things being equal every officer has a superior claim to promotion to a post in his Department or Office; (c) as the applicant and the appointee had been employed in differ-

ent Departments and the respective confidential reports had been made by different officers no valid comparison of their respective merits could be made by the Commission; (d) if the appointee was "superior" then the superiority was not "manifest"; (e) the majority of the Commission preferred the appointee because he had obtained his legal qualification in England, while the applicant had got his in Greece; and this was wrong, because the applicant as well as being a law graduate of Athens University "knew English quite well", had acted in the Department "for many years" and had passed the examination of the Statute Laws of Cyprus and therefore "should be able to be quite familiar with the relevant laws relating to the work of the Department".

I propose dealing briefly with each of these points in turn.

(a) The appointee produced a list of Laws with which the Department of the Official Receiver and Registrar is concerned. The list (*exhibit 13*) reads:

"Relative legislation for the sub-judice post is:-

1. Bankruptcy Law, Cap. 5.
2. Companies Law, Cap. 113.
3. The Partnership and Business Names Law, Cap. 116.
4. Trade Marks Law, Cap. 268.
5. Patents Law, Cap. 266.
6. The Rules of Court.
7. The Civil Procedure Law, Cap. 6.
8. The Oaths Law, Cap. 18.
9. The Criminal Procedure Law, Cap. 155.
10. The Courts of Justice Law, 1960.
11. The Stamp Law, 1963.
12. The Evidence Law, Cap. 9.
13. The Fraudulent Transfers (Avoidance) Law, Cap. 62.
14. The Contract Law, Cap. 149.
15. The Bills of Exchange Law, Cap. 262.
16. The Cyprus Case Law.
17. The Trade Unions Law."

Mr. Triantafyllides said at the outset that he did not dispute the appointee's competence as regards the Laws Nos. 6-11. With reference to the Bankruptcy Law the appointee said:

"My knowledge is derived from a study of equity, which

was one of the subjects of the Bar Final Examination that I passed. Further, in the course of my service in the District Court (from 1947–1963) and particularly during the years 1960–63, I was filing bankruptcy notices and petitions and drawing up all kinds of orders under the Bankruptcy Law. Once or twice I acted as interpreter while a debtor was being publicly examined.

From 1964–68 I was in charge of the editing of the judgments of the Supreme Court, by which I mean I was preparing the headnotes for their publication in the form of regular law reports. The preparation of headnotes involves careful perusal of the judgments in order to extract the ratio decidendi.”

He went on to produce the Calendar of the Council of Legal Education for 1958–59 (*exhibit 14*) showing, at pp. 72, 73 the subjects of the Hilary, 1959, Bar Final Examination.

Looking into Snell’s Principles of Equity (27th Edn.), one finds a section on “the Bankruptcy Rules on Priority” and certain other bankruptcy rules which are applicable to the administration of an insolvent estate; see pp. 310 et seq.

He further produced a copy of the schemes of service relating to the post of Registrar, 1st Grade (*exhibit 15*), which reads:

“ Duties and Responsibilities:

A Registrar, 1st Grade, is normally posted to one of the largest District Courts besides Nicosia (i. e. Limassol or Famagusta) or to the Supreme Court. If posted to a District Court, he is in charge of the registry and his duties and responsibilities are similar to those of the Senior Registrar. If posted to the Supreme Court, his principal duties (delegated to him by the Chief Registrar) are to supervise the administration of estates in the District Courts and to examine the accounts of personal representatives and guardians of infants; he deputises for the Chief Registrar when necessary.

Qualifications required:

Thorough knowledge of the practice and procedure of the Courts in civil and criminal matters, including Rules of

Court and, in particular, those special Laws which affect work performed by or under the supervision of Registrars; knowledge of English of the Honours standard; ability to interpret in Greek and/or Turkish; knowledge of financial regulations and some experience in accounts; ability to control subordinate staff, and to deal tactfully but firmly with members of the Bar and the public generally.” 5

With regard to item 16 of *exhibit* 13 it is relevant that the appointee had been editor of the Cyprus Law Reports for four years. 10

For the rest, the relevant legislation is such that anyone who has read law anywhere, and particularly in England on whose laws that legislation is modelled, should have no difficulty in getting up the legal work of the Department.

(b) No authority has been cited for this proposition, and I am not aware of anything to that effect. Naturally every officer has a desire to obtain promotion, and when the desired post is in the Department in which he is serving he may be more or less ready to cope with the duties of the higher post. But such consideration should not lead the Commission to treat such a Department as more or less closed to other officers and deflect it from selecting the best candidate, which is its paramount duty. Nor can it be said that the Commission overlooked the fact of the applicant's long employment, for in its minutes *exhibit* 4 there are two references to it. 15 20 25

(c) No case has been cited on this topic, but in *Georghiou v. Republic*, (1977)* 9-10 J.S.C. 1476, at p. 1483, para. 2, Triantafyllides, P., giving the judgment of the full bench said:-

“ We do agree that it is open to the Commission—as well as to an administrative Court trying a recourse—to give due weight to the fact that different reporting officers cannot be treated as having made their assessments by using identical standards and that, therefore, some allowance may have to be made for possible differences in the evaluation of various candidates when they have not been reported on by the same reporting or countersigning officer” 30 35

* To be reported in (1976) 3 C.L.R.

However, there is no reason to suggest either that the Commission overlooked the fact that the confidential reports on the applicant and the appointee respectively had been made by different officers, or that they played a decisive part in the selection of the appointee.

(d) "Manifest superiority" is not necessary as a ground of selection by the Commission, but only as a ground for interfering with its passing over an officer having seniority over one who has been preferred.

(e) *Exhibit 4* simply records what the Official Receiver had said, and the majority's view thereon, and there is nothing to show that the majority had been decisively influenced by the respective legal qualifications of the applicant and the appointee.

Altogether, while one must feel for a party in the position of the applicant, who has served well in the Department to which the subject post belongs and has a natural claim for promotion, one must remember that an administrative Court can only interfere on one of the recognised grounds and is not to substitute its own view for the decision of the administration.

In the result the application must be, and hereby is, dismissed without any order as to costs.

Application dismissed. No order as to costs.