

1979 December 15

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION
ANDREAS IOANNIDES AND ANOTHER,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case Nos. 215/77 and 235/77).

Public Officers—Promotions—Promotion post—Consideration of candidates for promotion—Non-reference to applicant by name in Commission's minute.—But reference to all officers serving in the immediately lower post, in which applicant was, also, serving —In the absence of indication to the contrary applicant among those duly considered when the Commission made the sub judice promotions. 5

Public Officers—Promotions—Senior Welfare Officer—Applicant by 14 months senior to the interested parties—But latter having better confidential reports and additional qualifications including one that was desirable under the schemes of service—Applicant failed to establish striking superiority over interested parties—His seniority could not have been a decisive factor once all relevant circumstances were not equal—Sub judice promotions reasonably open to the Commission. 10
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Public Officers—Promotions—Annulment by administrative Court—Reconsideration of the matter—Respondent Public Service Commission empowered to consider the merits of all officers who were candidates at the time when annulled promotions were made, including merits of those who have since retired from the service— Expression "serving in the immediately lower post" in section 30(1)(c) of the Public Service Law, 1967 (33/67) relates to the time when a promotion ought to have been made and not to the time when upon the annulment of a promotion a re-examination of the matter took place. 20
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Administrative Law—Executory act—Preparatory act—Compound administrative act—Examination of merits of candidates for promotion—A preparatory act and could not be as such the subject of a recourse after the compound administrative act, of which it is a part, has been completed.

Administrative Law—Annulment of administrative act—Reconsideration of the matter—Originally existing legal and factual situation ought to be taken into consideration.

Public Service Law, 1967 (33/67)—“Serving in the immediately lower post”—In section 30(1)(c) of the Law—Construction.

On January 24, 1963 the respondent Public Service Commission promoted to the post of Senior Welfare Officer (“the *sub judice post*”), with effect from 1.2.1963, three Welfare Officers amongst whom there was included the applicant in recourse 235/77. These promotions were annulled by the Supreme Court on 30.6.1966 and as a result the officers promoted were reverted to the post of Welfare Officer. As a result of the revision of the relevant schemes of service in 1967 there were required additional higher qualifications for promotion thereto; and when the Commission met on November 20, 1967 to consider the filling of the vacancies in the *sub judice post* applicant in recourse No. 235/77, as well as other Welfare Officers, were not invited for interview because they did not possess the qualifications envisaged by the revised schemes of service. The promotions to the *sub judice post* of the 20th November, 1967 were annulled on the 22nd December, 1975 upon recourses filed by applicant in recourse 235/77 and other officers, on the ground that their qualifications should have been examined on the basis of the scheme of service in force at the time of the annulment of their previous promotion and not on the basis of the revised scheme of service. The Commission met again on the 22nd April, 1977 and “considered the merits, qualifications, seniority, service and experience of all the officers serving in the post of Welfare Officer, as at 20.11.1967 (the date when the annulled promotion took place), as reflected in their Personal Files and in their Annual Confidential Reports”; and “after considering all the above and after taking into consideration all the facts appertaining to each one of the candidates” it decided to promote Christoforos Michael and Christakis Ierides (“the interested parties”) to the *sub judice post*. Hence these recourses by applicant in recourse

215/77 for a declaration that the decision of the Commission to promote the interested parties to the post of Senior Welfare officer is null and void; and by applicant in recourse 235/77 for a declaration that the consideration by the Commission of the “merits, qualifications, seniority and experience of all the officers serving in the post of Welfare Officer on the 20th November, 1967, to the extent that it refers to the applicant, is null and void”. 5

Applicant in recourse 215/77 was by 14 months senior to the interested parties but the latter had additional qualifications, (one of them, also, possessing a qualification, which under the schemes of service was desirable) and they were, further, better reported upon in the confidential reports. 10

Applicant in recourse 235/77 retired from the public service in August, 1971; and having filed a civil action in the District Court for compensation, under Article 146.6 of the Constitution, he came to know, from the defence filed in the aforesaid action, that the Commission did on the 22nd April, 1977 examined the merits etc. of the Welfare Officers who were in the service on 20.11.1967. 15

Counsel for the applicant in recourse 215/77 contended: 20

(a) That when the Commission considered the filling of the vacancies in the *sub judice post*, they failed completely to consider this applicant as a candidate once the post of Senior Welfare Officer was a promotion post from the immediately lower post of Welfare Officer to which the applicant was serving as at 20.11.67. 25

(b) That the respondent Commission failed in its duty to select the best candidate for the post in that it disregarded the applicant’s substantially greater seniority without cogent reasons; and that it acted contrary to the provisions of section 44(2) of the Public Service Law, 1967 because it disregarded without cogent reasons the substantially superior qualifications, merit and experience of the applicant. 30

Counsel for applicant in recourse 235/77 contended that this applicant could not be considered as a candidate for promotion on the 22nd April, 1977 in view of the fact that he had already retired and was not entitled to serve on that date in the public 35

service; and referred to section 30(1)(c)* of the Public Service Law, 1967 (Law 33/67) and argued that the word "serving" therein means persons who are in the civil service and not retired ones as in the case of the applicant.

5 *Held, (I) with regard to recourse 215/77:*

(1) That in the relevant part of the minutes of the respondent Commission it is stated that it considered the merits, qualifications, seniority, service and experience of all the officers serving in the post of Welfare Officer as at 20.11 1967, that consequently,
10 in the absence of any indication to the contrary, it cannot but be concluded that the applicant was among those duly considered by the respondent Commission when taking the *sub judice* decision; and that, accordingly, contention (a) must fail.

(2) That bearing in mind the totality of the circumstances that
15 were before the Commission the *sub judice* decision was reasonably open to it, that the exercise of its discretion in the circumstances was neither contrary to law nor arrived at under any misconception of fact or in abuse or excess of power; that the applicant has failed to establish any striking superiority over the
20 two interested parties and his fourteen months seniority could not have been a decisive factor once all relevant circumstances were not equal, and that, accordingly, recourse 215/77 must fail.

Held, (II) with regard to recourse 235/77.

(1) That the examination of the merits of this applicant on the
25 22nd April, 1977, was a preparatory act and could not be as such the subject of a recourse after the compound administrative act, of which it is a part, has been completed.

(2) That the applicant was rightly considered as a candidate
30 in spite of his retirement as on a new consideration of the matter, after the annulment of the previously made administrative act in the same matter, the originally existing legal and factual situation ought to be taken into consideration (see *Constantinou v. Greek Communal Chamber* (1965) 3 C L R 96 at p 105)

* Section 30(1)(c) provides as follows

"30(1)(c) Promotion offices which shall be filled by the promotion of officers serving in the immediately lower grade or office of the particular section or sub-section of the public service, as the case may be"

(3) That the expression "serving in the immediately lower post" to be found in section 30(1)(c) of the Public Service Law, relates to the time when the promotion ought to have been made and not to the time when upon the annulment of a decision by this Court a re-examination of the matter took place; that, moreover, there was no impossibility for matters to be reinstated to the position they were before the administrative act of the respondent Commission was annulled; that the re-examination by it of the question of promotions to the post in question was in fact a compliance by the respondent Commission with the decision of this Court in that case; that had the applicant been found suitable for promotion and promoted to the post of Senior Welfare Officer, he would have enjoyed as from the date the promotion would be made effective to the date of his retirement, both financial and moral benefits that such a promotion would give him and he would be retiring from that post with all the benefits to his pension that such a matter would entail; and that, accordingly, his recourse must fail.

Applications dismissed.

Cases referred to: 20

Constantinou v. Greek Communal Chamber (1965) 3 C.L.R. 96;
Decisions of the Greek Council of State Nos. 1406/1954 and 1229/1957.

Recourses.

Recourses against the decision of the respondent to promote the interested parties to the post of Senior Welfare officer in the Department of Welfare Services, in preference and instead of applicant No. 1 and against the decision to consider applicant No. 2 as a candidate for such post. 25

E. Lemonaris, for the applicant in case No. 215/77. 30

Ph. Valiandis for *L. Papaphilippou*, for the applicant in case No. 235/77.

N. Charalambous, Counsel of the Republic, for the respondent.

Cur. adv. vult. 35

A. LOIZOU J. read the following judgment. These two recourses have been heard together as they are connected with common facts and circumstances that go back to 1963, when the first decision promoting Welfare Officers to the post of Senior Welfare Officer was taken by the respondent Commis- 0

5 sion. The applicant in recourse No. 215/77 seeks a declaration of the Court that the decision of the respondent Commission of the 22nd April, 1977, to promote to the permanent post of Senior Welfare Officer Messrs. Chr. Michael and Chr. Ierides (hereinafter to be referred to as the interested parties) is null and void and of no effect whatsoever.

10 On the other hand the applicant in recourse No. 235 seeks a declaration "that the consideration by the respondent Committee which took place on the 22nd April, 1977 ... of the merits, qualifications, seniority and experience of all the officers serving in the post of Welfare Officer on the 20th November, 1967, to the extent that it refers to the applicant, is null and void and of no effect whatsoever".

The relevant minute reads as follows:-

15 " The Commission at its meeting of 24.1.63 decided, *inter alia*, that the following Welfare Officers be promoted to the post of Senior Welfare Officer w.e.f. 1.2.63:

20 Charilaos Kitromelides,
Demetrakis Christofides,
Christakis Ierides.

The Supreme Court in Revisional Appeal No. 10 of 1966 annulled the promotion of the above officers and consequently they were reverted to the post of Welfare Officer.

25 On 15.9.66 the Commission considered the filling of the above three vacancies in the post of Senior Welfare Officer. In considering the above, the Commission had observed that there was both some uncertainty as to the actual number of such vacancies as well as some ambiguity as regards the 'recognised specialist training' which was an essential qualification for this post. Consequently the
30 Commission decided that the filling of the vacancies in question be postponed the more since, according to the statement made by Messrs. Sparsis and Vakis, the Scheme of Service for this post was under revision.

35 In considering the filling of the above vacancies, the Commission had also observed that in the 1966 Budget two posts of Senior Welfare Officer had been double-daggered which, according to Note No. 5 of page 9 of the 1966 Budget, meant that out of the three existing vacancies

only one could be filled. The remaining two vacant posts would be abolished. In other words the approved establishment in the post of Senior Welfare Officer was reduced from 11 posts to 9 posts.

The relevant scheme of service was later on revised (it was revised on 13.4.67 and 9.6.67) and the post of Senior Welfare Officer, which was previously a 'Promotion Post', was converted to a 'First Entry and Promotion Post'. As the post of Senior Welfare Officer became a "First Entry and Promotion Post", the Commission decided on 17.7.67 that the relevant post be advertised. In response to the advertisement, 14 applications were received, including applications from Messrs. Kitromilides, Christofides and Ierides (Applicants in Case No. 8/68) and an application from Mr. Frangoulides (Applicant in Case No. 64/68). All the above officers (i.e. Applicants in Court Cases No. 8/68 and 64/68) were not invited for interview as they did not possess the required qualifications envisaged in the revised Scheme of Service, i.e. they had not acquired the necessary certificate or diploma from a University, University College or other recognised school or educational institution.

The Commission at its meeting of 20.11.67 proceeded with the filling of 2 vacancies in the post of Senior Welfare Officer and interviewed 5 candidates, who possessed the necessary qualifications in accordance with the revised scheme of service. The Commission accordingly decided that the following officers be promoted to the post of Senior Welfare Officer w.e.f. 15.12.67:

Christoforos Michael
Christos Konis

Messrs. Ch. Kitromilides, D. Christofides and Chr. Ierides (Applicants in S.C. Case No. 8/68) and Mr. Ch. Frangoulides (Applicant in S.C. Case No. 64/68) felt aggrieved by the Commission's decision referred to above and filed the above recourses with the Supreme Court.

The Supreme Court by its Judgment, which was issued on 22.12.75, declared the Commission's decision for the promotion of Messrs. Chr. Michael and Chr. Konis to the post of Senior Welfare Officer as null and void.

5 The Supreme Court by its judgment referred to above adopted the view that the qualifications of the applicants should have been examined by the Commission on the basis of the scheme of service in force at the time of the annulment of their previous promotion and not on the basis of the revised scheme of service.

According to the previous scheme of service, the post of Senior Welfare Officer was a Promotion Post from the immediately lower post of Welfare Officer.

10 The Commission considered the merits, qualifications, seniority, service and experience of all the officers serving in the post of Welfare Officer, as at 20.11.67 (the date when the annulled promotion took place), as reflected in their Personal Files and in their Annual Confidential Reports.

15 After considering all the above and after taking into consideration all the facts appertaining to each one of the candidates, 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
20 be promoted to the permanent post of Senior Welfare Officer w.e.f. the date shown opposite their names:

Christoforos Michael—w.e.f. 15.12.67.

Christakis Ierides—w.e.f. 1.5.77.

25 In deciding the effective date of Mr. Chr. Michael's promotion, the Commission bore in mind the observations made by the Supreme Court in Cases No. 187/62 and 156/64. In the case of Mr. Chr. Ierides the Commission bore in mind the contents of his letter of 20.4.77 in which he stated that he would have no claim for his promotion to have
30 retrospective effect and that he would accept a promotion as from a future date".

It is the allegation of applicant in recourse No. 215/77 that when the respondent Commission considered the filling of the vacancies in the post of Senior Welfare Officer, they failed
35 completely to consider this applicant as a candidate as they should have done once the post of Senior Welfare Officer was a promotion post from the immediately lower post of Welfare Officer to which this applicant was serving as at 20.11.1967.

In the relevant part of the minutes of the respondent Commission which have been set out earlier in this judgment, it is stated that the respondent Commission considered the merits, qualifications, seniority, service and experience of all the officers serving in the post of Welfare Officer as at 20.11.1967. Consequently, in the absence of any indication to the contrary, I cannot but conclude that the applicant was among those duly considered by the respondent Commission when taking the *sub judice* decision and therefore this ground fails.

The next ground with regard to this applicant is that the respondent Commission failed in their duty to select the best candidate for the post, they disregarded the applicant's substantially greater seniority without cogent reasons and that they acted contrary to the provisions of section 44(2) of the Public Service Law, 1967 (Law No. 33 of 1967) and/or acted in abuse of powers inasmuch as they disregarded without cogent reasons the substantially superior qualifications, merit and experience of the applicant. In support of this ground reference was made to the last paragraph of the minutes of the respondent Commission where it is stated that in deciding the effective date of promotion in the case of interested party Ierides, the respondent Commission "bore in mind the contents of his letter of 20th April, 1977, in which he stated that he would have no claim for his promotion to have retrospective effect and that he would accept a promotion as from a future date". It is because of this that this officer was promoted w.e.f. 1st May, 1977. The said letter is to be found in his personal file (*exhibit 4*, red 24) and interested party Ierides states therein that in case he is promoted as from a date in the future, he would accept same. There is nothing to suggest that he was canvassed or that the question of his promotion was bargained and discussed, nor does it suggest that the selection of the interested parties was made from a limited number of candidates, those involved in the recourses, which led to the annulment of the first decision of the respondent Commission and not from all the officers serving in the post of Welfare Officer. Relevant to the question of the selection of the best candidate are the respective careers and the contents of the confidential reports as appearing in the personal files and the confidential reports of the parties to these proceedings.

Applicant Ioannides attended Samuel Secondary School,

Nicosia, he passed examination in English Ordinary, English Distinction, Turkish Elementary and General Orders and he attended an In-Service Training Programme. He started his career in the Government service as a Temporary Clerical Assistant in 1947. He became Temporary Assistant Welfare Officer on the 1st November, 1951, Assistant Welfare Officer (permanent) on the 1st January, 1953, and a Welfare Officer on the 1st May, 1955.

Interested party Christoforos Michael attended the Pancyprian Gymnasium and English School, Nicosia, he passed examinations in the English Higher, Greek Higher, History (of the Cyprus Certificate of Education), he obtained a Diploma in Social Welfare from Swansea University in 1961, he attended an In-Service Training Programme and obtained Diploma in Urban Social Development, the Hague, in 1973. He first entered the Government service as a Temporary Clerical Assistant in 1946, became an Assistant Welfare Officer on 16.4.1953 and a Welfare Officer on the 1st July, 1956.

Interested party Christakis Ierides attended the Greek High School of Evrichou, passed examinations in English Ordinary and English Higher; he attended a two-year course at the University of Exeter and succeeded in satisfying the examiners in the following subjects in the Part I examinations held in June 1960, namely, Principles of Economics, Elementary Statistics, Social Services and Social Legislation, and was certified by the authorities of the University as being throughout his study at the University very regular in his attendances and proved to be a most diligent student. He entered the Government service as a Police Constable and was seconded to the post of Assistant Welfare Officer on the 1.2.1954; he became a Welfare Officer on 1.7.1976.

When the *sub judice* promotions were examined, the applicant was by 14 months senior in the post they held to interested parties, the two interested parties, however, had additional qualifications. In fact, interested party Michael has a Diploma in Social Science which under the schemes of service (enclosure 2 attached) is desirable. I shall not proceed to set out here the contents of the Confidential Reports on the parties but a perusal of them, particularly those most recent to the date as at which the annulled promotion took place, shows that the two interested parties were certainly better reported upon for their performance.

Bearing in mind the totality of circumstances that were before the respondent Commission, I have come to the conclusion that the *sub judice* decision was reasonably open to it. The exercise of its discretion in the circumstances was neither contrary to law nor arrived under any misconception of fact or/in abuse or excess of power. Applicant Ioannides has failed to establish any striking superiority over the two interested parties and his fourteen months seniority could not have been a decisive factor once not all relevant circumstances were equal. 5

For all these reasons the recourse of this applicant should fail. 10

I turn now to recourse No. 235/77 and mention may be made to certain facts particularly relevant to it. Applicant Kitromelides, along with two other Welfare Officers, filed Recourse No. 8/1968 seeking, *inter alia*, the annulment of the decision of the respondent Commission to promote two of their colleagues to the post of Senior Welfare Officer. On the 22nd December, 1975, judgment was delivered by a Judge of this Court annulling those promotions. In the meantime, however, and as from the 27th August 1971, this applicant retired from the civil service having reached the age limit and settled in London where he lives ever since. On the 20th April, 1976, this applicant filed in the District Court of Nicosia Action No. 1940/1976 by which he claimed just and reasonable compensation under Article 146, para. 6, of the Constitution. 15
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On the 3rd November, 1976, he filed his statement of claim, *exhibit 'C'* attached to the application. It has been alleged by this applicant that it was from the defence filed in that action on the 8th July, 1977, that he came to learn that the respondent Commission examined on the 22nd April, 1977, the merits, qualifications, seniority and experience of employees or officers who were in the service in the post of Welfare Officer on the 20.11.1967 and that they decided to appoint the two interested parties to that post, and he then gave instructions to his advocate to file the present recourse on the 22nd August, 1977. 30
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The decision of the respondent Commission to promote the two interested parties was published in the official Gazette of the Republic of the 3rd June 1977, under Notification No. 1036. The recourse of this applicant was filed on the 22nd August, 1977, that is to say, after the lapse of the 75 days from the date 40

the decision was published, and therefore if by this recourse the applicant was challenging the validity of the decision of the respondent Commission published as above, would be out of time and dismissed for that reason.

5 By this recourse however, the applicant seeks a declaration that the examination which took place on the 22nd April, 1977, so far as it referred to the applicant, is null and void and of no effect. He connects with it the fact that he could not have known of this examination before the filing of the statement
10 of claim in Civil Action No. 1940/76 on the 8th July, 1977, inasmuch as the legitimate interest of this applicant is not in the promotion but in the meeting of and examination by the respondent Commission on the 22nd April, 1977, of the applicant as a candidate for promotion, in view of the fact that he had
15 already retired and was not entitled to serve on that date in the civil service. In relation to this argument counsel for the applicant has referred to the provisions of section 30(1)(c) of the Public Service Law, 1967 (Law No. 33 of 1967) which reads:—

20 “ 30(1)(c) Promotion offices which shall be filled by the promotion of officers serving in the immediately lower grade or office of the particular section or sub-section of the public service, as the case may be”.

It was urged that the word ‘serving’ in the aforesaid provision means persons who are in the civil service and not retired ones
25 as in the case of the applicant. Counsel for the respondent has argued that the part of the decision challenged by the present recourse is a preparatory act and as such cannot be the subject of a recourse as same is not an executory act. No doubt the examination, as it has been called, of the merits of the applicant
30 on the 22nd April, 1977, was a preparatory act and could not be as such the subject of a recourse after the compound administrative act, of which it is a part, has been completed. The applicant was rightly considered as a candidate in spite of
35 his retirement as on a new consideration of the matter, after the annulment of the previously made administrative act in the same matter, the originally existing legal and factual situation ought to be taken into consideration.

This is a well established principle and if any authority is needed, reference may be made to the case of *Stylianou*

Constantinou v. The Greek Communal Chamber (1965) 3 C.L.R., p. 96, at p. 105, and Decisions 1406/1954 and 1229/1957 of the Greek Council of State referred to therein.

The expression "serving in the immediately lower post" to be found in section 30(1)(c) of the Public Service Law, relates to the time when the promotion ought to have been made and not to the time when upon the annulment of a decision by this Court a re-examination of the matter took place. Moreover there was no impossibility for matters to be reinstated to the position they were before the administrative act of the respondent Commission was annulled. The re-examination by it of the question of promotions to the post in question was in fact a compliance by the respondent Commission with the decision of this Court in that case. Had the appellant been found suitable for promotion and promoted to the post of Senior Welfare Officer, he could have enjoyed as from the date the promotion would be made effective to the date of his retirement, both financial and moral benefits that such a promotion would give him and he would be retiring from that post with all the benefits to his pension that such a matter would entail.

For all the above reasons both recourses are dismissed but in the circumstances I make no order as to costs.

Applications dismissed. No order as to costs.