

1980 January 17

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KYPRIANOS STYLIANOU AND ANOTHER,

Applicants,

v.

THE PUBLIC SERVICE COMMISSION,

Respondent.

(Cases Nos. 135/78, 136/78).

5 *Public Officers—Appointments—First entry post—Interview of candidates—Impression created by a candidate when interviewed—A factor which may legitimately be taken into account and is of particular importance when his personality is a factor relevant to the performance of his duties—Post of warder in the Department of Prisons—“Good personality” a required qualification in the schemes of service—Performance of candidates at the interview could be taken into account by the Commission.*

10 *Public Officers—Appointments—Qualifications—Whether a certain candidate possesses the relevant qualifications a matter within the discretion of the Public Service Commission—Court can only examine whether, on the material before it, the Commission could reasonably have come to a particular conclusion—Scheme of service requiring “very good knowledge of the Greek language”—*
15 *Commission ascertaining knowledge by the candidates of the Greek language through questions put to them during the interview—Whether method used inappropriate.*

20 *Public Officers—Appointments—First entry post—Warder in the Department of Prisons—Candidates serving as temporary warders—No reference in Commission’s minutes that such service was taken into consideration—But “experience” of the candidates given “proper weight”—Such “experience” obviously includes the length of their temporary service.*

The applicants, together with fifteen other persons, were candi-

dates for appointment to the post of warden in the Department of Prisons, a first entry post. At the material time they were all serving in that capacity on a temporary basis. All candidates were interviewed by the respondent Public Service Commission on October 7, 1977, in the presence of the Senior Superintendent of Prisons, and fourteen of them ("the interested parties") were appointed to the post of Warden. One vacancy was left unfilled, for the time being, in view of the fact that no other candidate was considered as suitable for appointment thereto. In deciding to make the above appointments the Commission considered* the "merits, qualifications and experience of the candidates interviewed as well as their performance during the interview" and observed that during the interview the interested parties "gave very satisfactory replies to questions put to them and generally they proved to be the best candidates for appointment to the post of warden". The Commission, further "held the view that the remaining candidates were not suitable for appointment to the above post, having regard to their performance at the interview". As the relevant scheme of service provided that candidates for the above post must possess "a very good knowledge of Greek", during the interview the Commission put all the questions to the candidates in Greek in order to determine the candidates' knowledge of this language; and from the replies to questions put to the candidates the Commission was satisfied that the "interested parties" did possess "very good knowledge of Greek". The Senior Superintendent of Prisons stated that all the interested parties "were serving in the Central Prisons on a temporary basis for some time, their services have been very satisfactory and that he considered them suitable for the post of warden".

By these recourses the applicants did not challenge the validity of the above appointments but they merely complained that they themselves were not so appointed.

Counsel for the applicants contended:

- (a) That in not selecting for appointment the applicants the Commission was influenced by the performance of the candidates when they were interviewed on October 7, 1977.

* See it minutes at pp. 15-16 *post*.

5 (b) That though under the relevant scheme of service there was required a "very good knowledge of the Greek language" ("πολύ καλή γνώσις τῆς Ἑλληνικῆς γλώσσης"), yet, as it appeared from the minutes of the respondent Commission, the candidates interviewed by it were tested as regards their knowledge of the Greek language merely by asking all the questions put to them in Greek and without requiring them to sit for an examination of any kind by means of which their knowledge as regards "writing in Greek" could have been tested.

10 (c) That though, as stated in the relevant minutes of the Commission, the Senior Superintendent of Prisons had informed the Commission that all the candidates were suitable for appointment to the post of warder, nevertheless the two applicants were not appointed to such post, without any adequate reason having been given by the Commission for not appointing them.

15 (d) That the length of service of each candidate, in a temporary capacity, as a warder was not duly taken into account.

20 *Held*, (1) that though the Commission was influenced by the performance of the candidates during the interview the impression created by a candidate when he is being interviewed is a factor which may legitimately be taken into account; that such impression is of particular importance when his personality is a factor relevant to the performance of his duties; that the post of warder is, indeed, a post in relation to which the personality of its holder is of quite some significance since in the relevant scheme of service express reference is made to "good personality" as a required qualification for appointment to the post in question; and that, accordingly, contention (a) must fail.

25 (2) That in determining whether a certain applicant in fact possesses the relevant qualifications the Commission is given a discretion, and this Court can only examine whether the Commission, on the material before it, could reasonably have come to a particular conclusion (see *Petsas v. The Republic*, 3 R.S.C.C. 60 at p. 63); that this Court has not been satisfied that the Commission, on the material before it, could not, reasonably, have come to the conclusion that the candidates interviewed by

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it for appointment to the post of warder did possess very good knowledge of Greek; that, therefore, there has not occurred in the exercise in this respect of the powers of the respondent Commission, a material error which can be treated as vitiating the decision not to appoint the two applicants to the said post; and that, accordingly, contention (b) must fail. 5

(3) That as it appears from the minutes of the Commission, the Senior Superintendent of Prisons did not include the applicants among those whom he recommended as suitable for appointment; that this was yet another reason which clearly justified the Commission's decision not to appoint them; and that, accordingly, contention (c) must fail. 10

(4) That in the relevant minutes of the Commission it is expressly stated that the "experience" of the candidates, which obviously includes the length of their service as temporary warders, was given "proper weight"; that, therefore, contention (d) is not correct and it must fail. 15

Applications dismissed.

Cases referred to:

Pattichis and Another v. The Republic (1968) 3 C.L.R. 374 at p. 383; 20

Panayiotou and Another v. The Republic (1968) 3 C.L.R. 639 at p. 642;

Duncan v. The Republic (1977) 6 J.S.C. 828 at p. 838 (to be reported in (1977) 3 C.L.R. 153); 25

Christodoulou and Another v. The Cyprus Telecommunications Authority (1978) 3 C.L.R. 61 at p. 67;

Panayidou v. The Republic (1978) 3 C.L.R. 144 at p. 153;

Petsas v. The Republic, 3 R.S.C.C. 60 at p. 63;

Georgiades and Others v. The Republic (1967) 3 C.L.R. 653 at p. 669. 35

Recourses.

Recourses against the decision of the respondent Public Service Commission not to appoint the applicants to the post of Warder in the Department of Prisons. 35

L.N. Clerides, for the applicants.

G. Constantinou (Miss), for the respondent.

Cur. adv. vult.

5 TRIANTAFYLLIDES P. read the following judgment. The applicants complain against the decision of the respondent Public Service Commission not to appoint them to the post of warder in the Department of Prisons, which was communicated to them by letters dated January 25, 1978.

10 The said decision was reached by the Commission on October 7, 1977. On that occasion the Commission, after having interviewed, in the presence of the Senior Superintendent of Prisons, seventeen candidates, including the two applicants, proceeded to appoint to the post of warder fourteen out of the said candidates and left one vacancy unfilled, for the time being, in view of the fact that no other candidate was considered as suitable for appointment thereto.

15 It is to be noted that by their recourses the applicants do not challenge the validity of the appointments, as stated above, of other candidates to the post concerned, but they complain, merely, that they themselves were not so appointed.

The relevant part of the minutes of the meeting of the respondent Commission, on October 7, 1977, reads as follows:

20 "The Commission as well as the Senior Superintendent of Prisons put several questions to all the candidates on matters of general knowledge and on matters connected with the duties of the post as shown in the relevant scheme of service.

25 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.).

30 The Commission observed that, during the interview, Messrs. Christos Menelaou, Savvas Mardapittas, Michael S. Michael, Haralambos Hadjinicolaou, Andreas Kazikas, Georghios Lambrou, Kyriacos Vasiliou Kyriacou, Loizos Leonidou, Stavros Papadopoulos, Haralambos Patsalides, 35 Alexandros Stylianou Christodoulou, Georghios Roushias, Andreas Chr. Kyriacou and Michalakis Georghiou gave very satisfactory replies to questions put to them and generally they proved to be the best candidates for appointment

to the post of Warder. The Commission held the view that the remaining candidates were not suitable for appointment to the above post, having regard to their performance at the interview.

The Senior Superintendent of Prisons stated that all the candidates referred to in the preceding paragraph were serving in the Central Prisons on a temporary basis for some time, their services have been very satisfactory and that he considered them suitable for the post of Warder. 5

According to the relevant scheme of service, candidates for appointment to the post of Warder must possess 'a very good knowledge of Greek'. In order than the Commission might determine the candidates' knowledge of this language, in accordance with the relevant scheme of service, all the questions put to the candidates, during the interview, were in Greek. From the replies to questions put to the candidates referred to above, the Commission was satisfied that the candidates in question did possess 'a very good knowledge of Greek'. 10 15

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, abilities and experience of these candidates, as well as to their suitability for appointment to the above post as shown at the interview, the Commission came to the conclusion that the following candidates were on the whole the best. The Commission accordingly decided that the candidates in question be appointed to the post of Warder w.e.f. 1.11.77,....." 20 25

The post of warder is a first entry post. At the material time all the candidates for appointment to such post were already serving in that capacity on a temporary basis. 30

Counsel for the applicants complains that in not selecting for appointment the applicants the Commission was influenced by the performance of the candidates when they were interviewed on October 7, 1977. It is true that it was so influenced, to a certain extent; this can be derived from its above quoted minutes. 35

That the impression created by a candidate, when he is being

interviewed by the competent organ for appointment or promotion to a particular post, is a factor which may legitimately be taken into account has been laid down by this Court in a number of cases, such as *Pattichis and another v. The Republic*, 5 (1968) 3 C.L.R. 374, 383, *Panayiotou and another v. The Republic*, (1968) 3 C.L.R. 639, 642, *Duncan v. The Republic*, (1977)* 6 J.S.C. 828, 838, *Christodoulou and another v. The Cyprus Telecommunications Authority*, (1978) 3 C.L.R. 61, 67, and *Panayidou v. The Republic*, (1978) 3 C.L.R. 144, 153.

10 It is to be derived from the above case-law that the impression created by a candidate when interviewed is of particular importance when his personality is a factor relevant to the performance of his duties at such post; and the post of warder is, indeed, a post in relation to which the personality of its holder is of quite
15 some significance. There can be no doubt in this respect since in the relevant scheme of service express reference is made to "good personality" ("καλή προσωπικότης") as a required qualification for appointment to the post in question.

20 Counsel for the applicants has complained that though another qualification in the said scheme of service is "very good knowledge of the Greek language" ("πολύ καλή γνώσις τῆς Ἑλληνικῆς γλώσσης"), yet, as it appears from the relevant minutes of the respondent Commission, the candidates
25 interviewed by it on the aforementioned occasion were tested as regards their knowledge of the Greek language merely by asking all the questions put to them in Greek and without requiring them to sit for an examination of any kind by means of which their knowledge as regards "writing in Greek" could have been tested.

30 As it has been laid down in *Petsas v. The Republic*, 3 R.S.C.C. 60, 63, "in determining whether a certain applicant in fact possesses the relevant qualifications the Commission is given a discretion, and this Court can only examine whether the Commission, on the material before it, could reasonably have come to a particular
35 conclusion".

Though, indeed, it has been held, in cases such as *Georghiades and others v. The Republic*, (1967) 3 C.L.R. 653, 669, that the ascertainment of the possession by a candidate of a required high standard of knowledge of a foreign language, such as

* To be reported in (1977) 3 C.L.R. 153.

English, cannot sometimes be made properly by merely asking questions at the interviews, the method of ascertaining the knowledge of the Greek language, through questions put to candidates during interviews, was not treated as being inappropriate in the *Duncan* case, *supra* (see at p. 835). In the present case I have not been satisfied, in the light of the principle laid down in the *Petsas* case, *supra*, that the Commission, on the material before it, could not, reasonably, have come to the conclusion that the candidates interviewed by it for appointment to the post of warder did possess very good knowledge of Greek. It is to be pointed out, in this connection, that the applicants cannot really complain about the method in which the possession of the required knowledge of the Greek language was ascertained by the respondent Commission, because they themselves, also, were found, together with all the other candidates, to have such required knowledge; and it is to be noted that, as it appears from the applications for appointment of all the candidates, including the two applicants, the other candidates had completed at least six years of study at secondary schools, whereas applicant Stylianou had studied for only three and a half years at a secondary school and applicant Loucaides had done so for only four years.

So, even assuming that the Commission had gone further into the matter of the possession by the candidates of the required standard of knowledge of Greek, by looking at the educational qualifications of the candidates, which were before it together with their applications for appointment, then the two applicants would have been found to be less educated as regards, *inter alia*, the Greek language, than all the other candidates.

Having all the foregoing in mind I have not been satisfied that there has occurred, in the exercise in this respect of the powers of the respondent Commission, a material error which can be treated as vitiating the decision not to appoint the two applicants to the post of warder.

Counsel for the applicants has contended, also, that though, as stated in the relevant minutes of the Commission, the Senior Superintendent of Prisons had informed the Commission that all the candidates were suitable for appointment to the post of warder, nevertheless the two applicants were not appointed to such post, without any adequate reason having been given by

the Commission for not appointing them. This contention of counsel for the applicants is not well-founded, because, as it appears from the minutes of the Commission, the Senior Superintendent of Prisons did not include the applicants among those whom he recommended as suitable for appointment; and this
5 was yet another reason which clearly justified the Commission's decision not to appoint them.

Lastly, counsel for the applicants has complained that the length of service of each candidate, in a temporary capacity, as a warder was not duly taken into account; in my view, this
10 is not correct, because it is expressly stated in the relevant minutes of the Commission that the "experience" of the candidates, which obviously includes the length of their service as temporary warders, was given "proper weight".

15 For all the foregoing reasons I find that these recourses cannot succeed and they are dismissed accordingly; but in the light of all pertinent considerations I have decided not to make an order as to costs against the applicants.

20 *Applications dismissed. No order as to costs.*