

1980 May 10

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

VASSILIOS SOTERIOU,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Case No 360/78).

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5 *Public Officers—Schemes of service—Interpretation—Within discre-*  
*tion of Public Service Commission—Principles on which Court*  
*will interfere with exercise of such discretion—Scheme of service*  
*requiring “a good general education not below the standard of*  
*a leaving certificate of a five year Secondary School”—Onus*  
*rests on candidate to prove that he possesses such degree of educa-*  
*tion.—Whether Commission bound to hold out a test in order to*  
*ascertain the candidates’ standard of education—Reasonably*  
*open to the respondent Commission, on the material before it,*  
10 *to reach conclusion that applicant did not possess standard of*  
*education required by the scheme of service.*

15 The applicant in this recourse was a candidate for promotion  
to the post of Inspector in the Department of Prisons, a promo-  
tion post. The respondent Commission found that the applicant  
did not have “a good general education not below the standard  
of a leaving certificate of a five year secondary school”, in accord-  
ance with the relevant scheme of service, and, therefore, he was  
not qualified for promotion. Hence this recourse which was  
20 directed against the validity of the decision of the respondent  
Commission to promote the interested party to the above post  
in preference and instead of the applicant.

Counsel for the applicant contended:

That as the scheme of service requires candidates to have

“a good general standard of education not below the standard of a leaving certificate of a five year Secondary School” and not to possess a leaving certificate of a such a school, the respondent Commission had a duty, before deciding that the applicant was not qualified for promotion, to ascertain, by holding a test, whether the applicant possessed or not a standard of education equal to that of a leaving certificate of a five year Secondary School. 5

Besides attending an elementary School for six years applicant attended afternoon lessons in Greek, English, book-keeping and mathematics at the Centre of Higher Studies Famagusta in 1961, 1962 and 1963, and has, also, passed the Departmental examinations on Prison Regulations and Legislation. 10

*Held*, (1) that a person alleging that he has “a good general education not below the standard of a leaving certificate of a five year Secondary School” must prove, the onus resting on him, that he possesses that degree of general education that could qualify him in obtaining a leaving certificate from a five year Secondary School. 15

(2) That this Court as an administrative Court controlling the exercise of the discretion of the Public Service Commission when it decides whether or not a candidate possesses the qualifications required under a scheme of service, examines only whether the Commission on the material before it could reasonably have come to a particular conclusion. 20 25

(3) That as the respondent had before it all material available to it relating to the educational background of the applicant, in the circumstances it was reasonably open to it to reach the conclusion that the applicant did not possess a good general education not below the standard of a leaving certificate of a five year Secondary School. 30

(4) That the respondent did not have to carry an inquiry, by testing the applicant, not only because it was reasonably open to it to reach the conclusion it did but, also, because when one looks at the educational background of the applicant it cannot be said that the respondent, in exercising its powers, made a material error that can vitiate its decision; and that, accordingly, the recourse must fail. 35

*Application dismissed.*

Cases referred to:

*Ktorides v. Republic* (1973) 3 C.L.R. 171 at p. 173;

*Andreou v. Republic* (1979) 3 C.L.R. 379 at p. 386.

**Recourse.**

5 Recourse against the decision of the respondent to promote the interested party to the post of Inspector in the Department of Prisons in preference and instead of the applicant.

*L. N. Clerides*, for the applicant.

*G. Constantinou (Miss)*, for the respondent.

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*Cur. adv. vult.*

DEMETRIADES J. read the following judgment. By his present recourse the applicant seeks a declaration of the Court that the promotion of A. Kypridemos to the post of Inspector in the Department of Prisons, in preference and instead of the applic-  
15 ant, which was communicated to him on the 1st August, 1978, is null and void and of no legal effect whatsoever.

The grounds of law relied upon by the applicant are the following:

20 (a) The respondents failed to take into consideration the seniority of the applicant (7 years) in comparison with the interested party A. Kypridemos.

25 (b) Considering the seniority, merit, recommendations of the Prison authorities and the exceptional services of the applicant as from 1953, the decision of the respondents to promote the interested party constitutes an abuse of power within the meaning of Article 146 of the Constitution, because the respondents failed in their duty to select the most suitable person for promotion, i.e. the applicant.

30 The post of Inspector in the Department of Prisons is a promotion post and the scheme of service (*exhibit No. 1*) reads as follows:-

*“Duties and Responsibilities:*

35 To perform such duties as may be laid down in the relevant legislation and regulations; to assist a superior officer in his duties; to be responsible under the supervision

of a superior officer for any particular section of the prisons work assigned to him and for the discipline and training of the prisoners and staff under him; and other duties which may be assigned to him.

*Qualifications Required:*

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A good general education not below the standard of a leaving certificate of a five year Secondary School; knowledge of Greek in the case of a Turkish officer or Turkish in the case of a Greek officer would be an advantage. Should have passed the examination in Prisons legislation and regulations; a knowledge of English would be an advantage. A high moral character, strong personality and stability of temperament; ability to impose and maintain discipline and experience in handling men".

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The respondent Commission met to consider the filling of the post concerned on the 25th July, 1978, and decided that the applicant was not qualified for promotion as he did not possess a good general education not below the standard of a leaving certificate of a five year Secondary School, a qualification required by the scheme of service for the post concerned.

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The relevant part of the minutes of the meeting of the respondents (*exhibit No. 2*), reads as follows:-

"The post of Inspector is a Promotion Post from the immediately lower post of Senior Warder. Under the relevant scheme of service, candidates for promotion to the above post must have, *inter alia*, a good general education not below the standard of a leaving certificate of a five year secondary school and should have passed the examination in Prisons legislation and regulations.

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The Commission considered the merits, qualifications, seniority, service and experience of all the officers serving in the post of Senior Warder, as reflected in their Personal Files and in their Annual Confidential Reports.

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The Commission considered also the general education of all the candidates in relation to the relevant scheme of service. Having regard to their general education, the Commission held the view that the following candidates did not have 'a good general education not below the

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standard of a leaving certificate of a five year secondary school' in accordance with the relevant scheme of service and, therefore, they were not qualified for promotion:

.....  
Vassilios Soteriou  
.....”

5 The applicant's standard of education appears in his personal file, which is *exhibit No. 4A* (reds 7 and 16) and is:-

- (a) Attendance for six years at the Elementary School of Pyrga Famagusta, and
- 10 (b) attendance for afternoon lessons in Greek, English, book-keeping and mathematics at the Centre of Higher Studies Famagusta in 1961, 1962 and 1963.

In addition, the applicant, according to *exhibit No. 3* which is headed "Table showing particulars of the Government Service and Qualifications of the applicant and the interested party",  
15 has passed the Departmental Examinations on Prison Regulations and Legislation.

Counsel for the applicant conceded that the only issue before the Court is the finding of the respondents that the applicant did not possess "a good general education not below the standard  
20 of a leaving certificate of a five year Secondary School" and submitted that as the scheme of service requires candidates to have such a standard of education and not to possess a leaving certificate of a five year Secondary School, the respondents had a duty, before deciding that the applicant was not qualified  
25 for promotion, to ascertain, by holding a test, whether the applicant possessed or not a standard of education equal to that of a leaving certificate of a five year Secondary School.

In support of his submission, learned counsel for the applicant relied on the cases of *Georghiades v. The Republic*, (1967) 3  
30 C.L.R. 653 and *Phylactou v. The Republic*, (1973) 3 C.L.R. 444, in both of which one of the issues before the Court was whether the applicant had a good knowledge of English, a qualification required by the relevant scheme of service. The above cited cases, however, are not similar to the present one and I find  
35 that they do not assist the applicant in any way.

In my view, a person alleging that he has "a good general

education not below the standard of a leaving certificate of a five year Secondary School” must prove, the onus resting on him, that he possesses that degree of general education that could qualify him in obtaining a leaving certificate from a five year Secondary School.

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In *Ktorides v. The Republic*, (1973) 3 C.L.R. 171, Triantafyllides P. said the following (at p. 173):-

“It is well settled that this Court, as an administrative Court controlling the exercise of the discretion of the Public Service Commission when it decides whether or not a candidate possesses the qualifications required under a scheme of service, examines only whether the Commission on the material before it could reasonably have come to a particular conclusion .....

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This principle is to be found in a number of cases (see for example *Andreou v. The Republic*, (1979) 3 C.L.R. 379, 386).

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In view of the fact that the respondents had before them all material available to them relating to the educational background of the applicant, I find that, in the circumstances, it was reasonably open to them to reach the conclusion that the applicant did not possess a good general education not below the standard of a leaving certificate of a five year Secondary School.

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As regards now the submission that the respondents had to carry an inquiry, by testing the applicant, in order to ascertain his standard of education, I find that this submission is of no substance, not only for what I have just stated, but, also, because when one looks at the educational background of the applicant, which was before the respondents, and the contents of his application for appointment to the service (see red 7 in *exhibit No. 4A*), it cannot be said that the respondents, in exercising their powers, made a material error that can vitiate their decision that the applicant did not possess the qualifications as to education required by the scheme of service for the post concerned.

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In the result, this recourse fails and is dismissed, but, in the circumstances, I make no order as to costs.

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*Application dismissed. No order as to costs.*