

1980 June 21

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANASTASSIOS TANTELES AND ANOTHER,

Applicants.

v.

THE CYPRUS BROADCASTING CORPORATION, THROUGH
ITS COUNCIL,

Respondent.

(Cases Nos. 256/76, 260/76).

Public Officers—Appointments and promotions—Programme Officer (Television) in the Cyprus Broadcasting Corporation—Seniority—When does it prevail—Sub judice appointments reasonably open to the respondent Corporation—Applicants, upon whom the burden of proof lay, failed to establish any striking superiority over the interested parties.

The applicants in this case challenged the validity of the appointment of the interested parties to the post of Programme Officer (Television). The Court having referred to the qualifications and experience of the applicants and the interested parties (vide p. 315 *post*) dismissed the recourses having held:

- (1) That the seniority of the two applicants as against interested party Pavlides was not sufficient to tip the scales in their favour as it appears that the Board of the respondent Corporation did not find them to be equal in view of the recommendation of the Head of the Department, and seniority only prevails when all other factors are equal.
- (2) That on the whole the *sub judice* decision was reasonably open to the respondent and its discretion has been properly exercised and after a due inquiry; and that the applicants, upon whom the burden of proof lay, failed to establish any striking superiority over the interested parties.

Applications dismissed.

Cases referred to:

Partellides v. Republic (1969) 3 C.L.R. 480;

Vonditsianos and Others v. Republic (1969) 3 C.L.R. 83;

Duncan v. Republic (1977) 3 C.L.R. 153.

Recourses.

5

Recourses against the decision of the respondent to appoint the interested parties to the post of Programme Officer (Television) in preference and instead of the applicants.

P. Ioannides, for *T. Papadopoulos*, for the applicants.

K. Chrysostomides, for the respondent.

10

A. Skordis, for interested party No. 1.

Interested parties Nos. 2 and 3 absent.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By these two recourses, which have been heard together, as they present common questions of law and fact, the applicants seek the annulment of the appointment of Nearchos Georghiades, Adonis Christophorou and Andreas Pavlides to the post of Programme Officer (Television).

15

The vacancies in these posts were advertised within the respondent Corporation and seven applications were in all submitted in response thereof. The Advisory Selection Committee after examining the qualifications required under the relevant scheme, invited these applicants for oral examinations. Interested party Pavlides, who was absent from Cyprus on leave at the time was invited and examined orally later. The relevant part of the minutes of the said Committee (*exhibit A*), which it may be mentioned here, was composed of the Director General, his assistant, the Director of Television Programmes, an Administrative Assistant Secretary and of three members of the Staff trade union, reads as follows:

20

25

30

“On the basis of the experience, merit and the oral examination the Committee ascertained that all candidates are suitable although on the basis of the personal examination certain reservations were expressed for Roditis and Iacovou, and on the basis of experience for Scordis. Upon inquiry by the trade union the Director General assured that independently of the change in the post of Director of Television Programmes the assessment would be made in the most fair manner.”

35

40

The Committee then set out in alphabetical order the seven candidates with the qualifications and experience of each one of them and it is useful to refer to those relating to the two applicants and the three interested parties.

5 Applicant Tanteles, is a graduate of the Famagusta Gymnasium. In the year 1962–1963 he attended the School of Tourist Trades and in the years 1966–1969 the Drama School of the National Theatre Organization. He was employed by the respondent Corporation and worked during the years 1970–1972
10 as a vision mixer and from 1972 as an Assistant Officer for Television Programmes.

Applicant Roditis graduated the Pancyprian Gymnasium in 1967, he attended the London School on T.V. Production and in 1968–1969 the London Film School. His experience
15 comes from work with Fenestra T.V. Productions during 1966–1967 and from 1971 with the respondent Corporation as Assistant Officer in Television Programmes.

Interested party Georghiades is a graduate of the Morphou Gymnasium and of the Philosophical School of the Athens
20 University; he attended the Katrakis School of Cinematography and he is also a graduate of the School of Law and Political Sciences of the Athens University.

Interested party Christophorou is a graduate of the Pancyprian Gymnasium. In 1961 he attended the Davies School
25 of English, London, in 1961–1962 the Ealing Technical College and 1962–1965 the London School on film technique. From 1965–1966 he was self-employed; during the year 1966–1968 he was employed by Selfridgers Ltd. London and from 1971 with the respondent Corporation, first as an Assistant Cinema
30 Operator and from 1973 to the post of Assistant Officer Television Programmes.

Interested party Andreas Pavlides attended the Pancyprian Gymnasium for two years and graduated from the Technical School Nicosia. He has a diploma of the Council for the
35 Registration of Architects and Civil Engineers. During the years 1967–1968 he worked for a private architect and in 1968 he was engaged by the respondent Corporation as an Assistant Officer of Television Programmes.

The Director-General then submitted to the Board of the respondent Corporation a memorandum on a number of confirmations, promotions and appointments and the relevant part in respect of the sub judice appointments reads as follows:

“There are seven candidates. The most senior in the service is Andreas Pavlides and the most junior Nearchos Georghiades. Between Georghiades and the rest of the candidates with the exception of Pavlides the difference in years of service is at the maximum point three years. Georghiades has more qualifications than the rest, being also the holder of a University degree. Scordis has the least experience in the post. Adonis Christophorou has the background of a good camera operator but he was transferred in 1973 to the post of Assistant Officer, Television Programme and to whom special duties were assigned on account of his overall personality, interest and ability. Since a year he performs special duties in the subsection of orders and control of films. In view of the above and the report of the Advisory Selection Committee it is submitted that in the post of Television Programme Officer to be appointed Andreas Pavlides, N. Georghiades and Andreas Christophorou. Anastassios Tanteles worked for two years prior to 1972 as Vision Mixer as compared with the work of Assistant Cinema Operator of Christophorou for the years 1971-1973, but the overall personality and performance places him at a higher post as compared with Tantele.”

The filling of these posts was considered by the Board of the respondent Corporation at its meeting of the 21st October 1976 and their minutes read as follows:

“Post of Television Programme Officer:

The Board of the Corporation having examined in detail the case of everyone of the candidates for this post and having studied and taken into consideration the report of the Advisory Selection Committee as well as the memorandum of the director general of the 20th October, 1976 on the subject and after the oral clarifications of the director general considered as more suitable for the post of Television Programme Officer the following: Nearchos Georghiades, Andreas Pavlides and Andreas Christophorou,

whom it appoints to the post of Programme Officer, (Television). The decision for Andreas Pavlides and Andreas Christophorou was unanimous. In the case of Nearchos Georghiades Mr. I. Payatas abstained."

5 The seniority of the candidates appears from the dates of their appointments and promotions during their service in the respondent Corporation.

I shall not embark into an analysis of the confidential reports on each one of the applicants and the interested parties as it
10 will serve no real purpose to put side by side the rating and the comments of the heads of the Department to be found in the columns of general remarks.

Photocopies of these reports have been produced on each one of them in respect of the three years preceding the sub-
15 justice decision. It is sufficient to say that the recommendations of the Director-General and bearing in mind the qualifications and length of service of the applicants and the interested parties, are not contrary to the contents of the confidential reports and the material in the file in general.

20 The more junior of them all, interested party Georghiades possesses a university degree which does not seem to have been treated as unconnected with the qualifications required under the relevant scheme of service, (*exhibit A-11*), these are:

25 "A good general education not below that of a Secondary School graduation. A very good knowledge of Greek and a good knowledge of another European language preferably English. A fair knowledge of the entertainment world in general and a good cultural background. Possession of an appropriate university degree or diploma, or
30 experience in television techniques will be an advantage."

On the whole the sub justice decision was reasonably open to the respondent Corporation. Their discretion appears from the material before me to have been properly exercised and after a due inquiry. The whole process started with the oral examinations and the consideration of the merits of all candidates
35 by the Advisory Selection Committee, the memorandum of the Director-General containing a duly reasoned recommendation and ultimately the *sub judice* decision reached by the Board of

the respondent Corporation on the material before it which was unanimous in respect of all, with one abstention in the case of interested party Georghiades. Interested party Georghiades is the most senior of them all and there follows applicants Roditis, Tanteles and Christophorou. Though Roditis has been an Assistant Programme Officer since his appointment in 1971, Christophorou was transferred to that post in 1973, but he counterbalances that experience with the duties as an Assistant Camera Operator, as pointed out by the Director-General in his memorandum.

As already stated, the seniority of the two applicants as against Pavlides was not considered as sufficient to tip the scales in their favour as it appears that the Board of the respondent Corporation did not find them all to be equal in view of the recommendation of the head of the Department, and seniority only prevails when all other factors are equal (see *Partellides v. The Republic* (1969) 3 C.L.R. p. 480).

With regard to the university degree of interested party Georghiades, it has been argued that a degree or diploma cannot be treated as an advantage unless, according to the scheme of service is considered as appropriate in the circumstances. I have been referred in that respect to the case of *Theodoros Vonditsianos and others v. The Republic of Cyprus, through the Public Service Commission*, (1969) 3 C.L.R. p. 83; and to the case of *Eleni Eliadou Duncan v. The Republic of Cyprus, through The Public Service Commission*, (1977) 3 C.L.R. 153. It seems from the material in the file and the recommendations of the Head of the Department that the degree of the interested party was treated as appropriate in the circumstances, but nowhere it is stated and from nowhere there appears to have been treated as an advantage and I do not feel that this is a case where I should myself imply such an attitude.

In conclusion I would like to say that the applicants, upon whom the burden of proof lay, failed to establish any striking superiority over the interested parties.

What remains now to consider is the new ground added in the course of the hearing and which arose out of the material in the relevant files which were produced as *exhibits* after the filing of the recourse, namely that the Board of the respondent Corpora-

tion in coming to the *sub judice* decision took into consideration matters which could not lawfully be so taken, that is the reports of the Central Information Office and or information about the political opinions of the candidates and that same amounted
5 also to unlawful reasoning of the *sub judice* decision.

This ground was originally added because of the existence of police reports containing also comments of the Central Information Service in the personal files of each candidate. The purpose of these reports was to obtain from the Commander
10 of the Cyprus Police a report on the character and previous convictions of the person whose particulars are given therein. At the back thereof, however, and under the heading "Police Report" there were included the comments and views of the Central Information Service. They were added on the 24th
15 September, 1976 and received not before the 5th November, 1976, which is the date appearing at the back thereof. As it can be seen, however, from the relevant record, the meeting of the Advisory Committee of selection took place on the 14th September and the meeting of the Board of the respondent
20 Corporation where the *sub judice* decisions were taken, on the 21st October, 1976, which means that these reports with the comments of the said service had not been received and were not in the file of anyone of the candidates at that meeting. In fact, they reached the respondent Corporation after the *sub*
25 *judice* decisions were taken.

In the course of the hearing it was further argued that comments were made at the meeting of the Board of the respondent Corporation regarding political views.

On this issue evidence was given by two of the then members
30 of the Board of the respondent Corporation to the effect that information of that nature was mentioned at the meeting but there was stated nothing of a definite nature regarding this particular meeting. In fact the Director-General of the respondent Board, who was also present throughout the deliberations
35 of the Board, very clearly stated that nothing of that nature was mentioned when the *sub judice* decision was taken.

On the totality of the circumstances before me this ground cannot succeed either.

For all the above reasons these two recourses are dismissed with no order as to costs.

Applications dismissed. No order as to costs.