

1980 April 30

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MAROULLA ALEXANDRIDOU,

Applicant,

v.

THE CYPRUS TOURISM ORGANIZATION
THROUGH ITS BOARD,

Respondent.

(Case No. 281/78)

*Public Officers—Appointments and promotions—Judicial control—
Principles applicable—Onus on applicant to show that she was
strikingly superior to those selected for appointment—Sufficient
inquiry as to whether interested party possessed qualifications
required by the scheme of service—Reasonably open to the respond- 5
ents to reach conclusion that he did possess these qualifications—
Proper reasoning given for preferring an outsider and not applicant
who was already in the service.*

The applicant in this recourse, a clerical assistant in the service
of the respondent Organization, was a candidate for appointment 10
to the post of clerk 2nd Grade, when the Organization invited
applications, by advertisement in the local press, for the filling
of this post.

After interviewing the candidates the respondents found that
the applicant was one of the two best candidates interviewed; 15
she was not, however, offered the post because the respondents,
after a careful study of the qualifications, experience, personality
and abilities of the two candidates came to the conclusion that
neither of the two candidates satisfied fully the requirements 20
of the scheme of service. In view of this conclusion the respond-
ents decided to readvertise the filling of the post and the candida-
ture of the applicant was again considered. After considering
applicant's merits, qualifications, personality, abilities, the answers
that she gave at the interview and the confidential reports in

respect of her, the respondents decided to appoint the interested party to the post concerned whom they found to be the best of the candidates and who satisfied the requirements of the relevant scheme of service.

5 Upon a recourse against the above decision counsel for the applicant mainly contended:

- 10 (a) That the respondents failed to carry out a due and/or proper inquiry for the purpose of ascertaining whether the interested party possessed the qualifications of "experience in clerical work and knowledge of typing" provided by the schemes of service; and
- 15 (b) That the respondents gave no reason why they had appointed the interested party in preference to the applicant, contrary to their established practice that if candidates have equal merits, qualifications and experience, the candidate who is in their service is preferred from an outsider.

20 Regarding the knowledge of typing by the interested party, as he had stated in his application that he knew how to operate a telex, the respondents inquired during the interview what was the connection between a telex and a typewriter and the interested party explained that the keyboard of both machines was the same. That the interested party did in fact know typewriting and made no false allegation during his interview was later

25 ascertained when he underwent a test by the Chief Clerk of the respondents.

30 Regarding the experience of the interested party in clerical work it was an undisputed fact that from 1965 up to the date of his interview by the respondent he was a civil servant holding the post of Clerical Assistant and that during his term of service he served with the Cyprus Mission in New York. During the interview the respondents inquired about the duties of and the work carried out by the interested party at the said Mission as well as his duties and other work during the remaining part

35 of his term of service in the Government; and the interested party explained that during his term of service with the said Mission he was handling the accountancy section of the Mission and that he had worked in the Registry of the Ministry of Foreign Affairs.

40 *Held*, (1) that once a due and proper inquiry had been carried

out by an administrative organ and a decision which was reasonably open to them was reached on the basis of the facts before them, an applicant must prove, the onus being on him, that he was strikingly superior to those selected for appointment or promotion (see *Georghiou v. Republic* (1976) 3 C.L.R. 74 at p. 83); that, considering all the facts of this case, the respondents did carry out a sufficient inquiry as to whether the interested party possessed the qualifications required by the scheme of service of the post concerned; that it was reasonably open to them to reach the conclusion that he did possess these qualifications; and that, accordingly, contention (a) must fail. 5 10

(2) That having in mind the minutes of both meetings of the respondents and the reasons given therein by them for not appointing the applicant after the first meeting and for offering the post to the interested party after their second meeting they are considered to be a proper reasoning in the circumstances of this case; and that, accordingly, contention (b) must fail. 15

Application dismissed.

Cases referred to:

Georghiou v. Republic (1976) 3 C.L.R. 74 at p. 83; 20
Evangelou v. Republic (1965) 3 C.L.R. 292, at pp. 299-300;
Panayidou v. Republic (1978) 3 C.L.R. 144, at p. 153.

Recourse.

Recourse against the decision of the respondent to appoint the interested party to the post of Clerk 2nd Grade in preference and instead of the applicant. 25

A. Panayiotou, for the applicant.

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

Cur. adv. vult. 30

DEMETRIADES J. read the following judgment. By her recourse, the applicant prays for a declaration that the act and/or decision of the respondents, which was communicated to her on or about the 25th April, 1978, to appoint the interested party K. Yiapanas instead of her to the post of Clerk 2nd Grade, is null and void and of no legal effect whatsoever. 35

The uncontested facts of this case, as they appear in the opposition to the application and the evidence adduced, are the following:

On the 15th March, 1977, the respondents, by a notice published in the local press (the daily newspapers "Phileletheros" and "Agon") invited applications for appointment to the post of Clerk 2nd Grade. Seventy-three (73) applications were submitted, including that of the applicant. All candidates, except the applicant, who was already in the service of the respondents holding the post of Clerical Assistant, as well as another person also then in the service of the respondents, were asked to take part in written examinations in the Greek and English languages, mathematics and general knowledge. On the basis of the results of these examinations, fifteen (15) candidates were asked to present themselves for an interview. Fourteen (14) candidates, including the applicant and the other employee of the respondents, were, on the 12th July, 1977, interviewed by the Selection Board of the Respondents and the members of the Board, after studying meticulously the facts appertaining to each one of the candidates, and having considered the qualifications, merits, personality, experience, as well as the answers given by the candidates to questions put to them, decided to invite new applications for the post concerned.

The invitation for new applications was published in the local press on the 18th September, 1977. In this publication it was stated that those persons who had applied by virtue of the invitation dated 15th March, 1977, were to be considered as candidates without having to submit a new application. The last date for submission of the applications was the 8th October, 1977. Thirty-nine (39) applications were submitted this time, including that of the interested party. All applicants, except one employee of the respondents, were asked to take part in written examinations. These examinations took place on the 19th October, 1977, and thirty-one (31) candidates took part in them. The subjects of the examinations were now Greek, English and general knowledge.

As a result of these examinations, thirteen (13) applicants were asked to present themselves for an interview. On the 21st December, 1977, twelve candidates, including the interested party, were interviewed by a Selection Board of the respondents (hereinafter referred to as the Board). After the interview, the Board, having studied meticulously the qualifications, merits, personality, experience, as well as the answers that were given by each candidate during the interview, and having also in mind the results of the interview of the 12th July, 1977, decided to

offer the post to the interested party who was found to be the best candidate and who, in their opinion, fulfilled completely the requirements of the scheme of service of the said post. The Board, in reaching its decision, took into consideration that the interested party was the second best successful candidate in the written examinations having obtained 241 points out of a total of 360. 5

The applicant graduated the English School of Nicosia in June 1966 and possesses the following certificates:

- (1) G.C.E. Modern Greek (OL). 10
- (2) L.C.C.
 - (a) Arithmetic, book-keeping (elementary).
 - (b) Arithmetic (intermediate).
- (3) Cambridge Lower Certificate in English. 15

She was first appointed in the service of the respondents as temporary Clerical Assistant on the 2nd January, 1971, and was, on the 1st October, 1972, appointed in the permanent post of Clerical Assistant, a post which she still holds. 15

The interested party graduated the Pancyprian Gymnasium of Kykko in 1964 and from 1965 he served as a Clerical Assistant in the Public Service. He possesses long experience in subjects of organization and running of Registries. 20

The post of Clerk 2nd Grade is a first entry and promotion post and the relevant scheme of service of such post, copy of which was produced and is *exhibit No. 1* before me, reads as follows:- 25

“Καθήκοντα και Εϋθῦναι: Συνήθη γραφειακά καθήκοντα τὰ ὁποῖα περιλαμβάνουν καταχώρησιν και κατάταξιν ἀλληλο-γραφίας και δακτυλογραφίαν. Στοιχειώδη λογιστικά καθή-κοντα ὑπὸ τὴν ἐπίβλεψιν ἀνωτέρου Λογιστικοῦ ὑπαλλήλου. Οἰαδήποτε ἄλλα καθήκοντα ἅτινα ἤθελον ἀνατεθῆ εἰς αὐτὸν. 30

Προσόντα:

- (α) Πολίτης τῆς Δημοκρατίας.
- (β) Καλὴ γενικὴ μόρφωσις οὐχὶ κατωτέρα ἐπιπέδου ἀπολυ-τηρίου ἑξαταξίου Σχολῆς Μέσης Ἐκπαιδεύσεως. 35
- (γ) Καλὴ γνώσις τῆς Ἑλληνικῆς και Ἀγγλικῆς γλώσσης.
- (δ) Πείρα γραφειακῆς ἐργασίας και γνώσεις δακτυλο-γραφίας”.

5 (“*Duties and responsibilities*: Usual secretarial duties which include the filing and sorting of correspondence and typing. Elementary book-keeping duties under the supervision of a senior Accounting-Officer and any other duties which may be assigned to him.

Qualifications:

- (a) Citizen of the Republic.
- 10 (b) Good general education not below the standard of a leaving certificate of a six-year School of Secondary Education.
- (c) Good knowledge of the Greek and the English languages.
- (d) Experience in clerical work and knowledge of typing.”)

The application is based on the following grounds of law:-

- 15 (a) The act and/or decision was taken in excess of powers in that the interested party does not possess the qualifications required by the scheme of service.
- 20 (b) The act and/or decision was taken in excess and/or in abuse of powers and/or as a result of a wrong exercise of discretionary powers in that the applicant is superior to the interested party as regards qualifications, merits and experience.
- 25 (c) The act and/or decision was taken under a misconception of fact with regard to qualifications, merits and experience of the interested party and/or the applicant.
- (d) The act and/or decision was discriminatory against the applicant on the ground of sex.

30 The case for the applicant, as it appears from the arguments advanced and the evidence of Mr. N. Tymvios, the Administrative Secretary of the respondents who was called by them as a witness in these proceedings, is that—

- 35 (a) The respondents wrongly found that the interested party possessed the qualifications required by the scheme of service, because this was not supported by the facts, as there was nothing before them to show that the interested party knew typing or book-keeping.
- (b) As the applicant did not take part in the written examinations held, their results could not be considered as an advantage over her.

- (c) The Selection Board gave no reasons why they had appointed the interested party in preference to the applicant, though it is their practice that if there are candidates with equal merits, qualifications and experience, the candidate who is in their service is preferred from an outsider. 5

For the applicant to succeed, she must satisfy the Court that—

- (a) The respondents failed to carry out a due and/or proper inquiry for the purpose of ascertaining whether the interested party possessed the qualifications under the scheme of service. 10
- (b) She was strikingly superior to the interested party.

The applicant, as I have earlier stated in this judgment, was a candidate for the post concerned when the first invitation for the filling of the said post was made. Although she was considered by the respondents to be one of the two best candidates interviewed, she was not offered the post because the Board, as it appears from the minutes of their meeting of the 12th July, 1977 (see *exhibit No. 2*), after a careful study of the qualifications, experience, personality and abilities of the two candidates, came to the conclusion that neither of them satisfied fully the requirements of the scheme of service. 15 20

As a result of their above conclusion, the Board decided that the said post had to be re-advertised. As it appears from the minutes of the meeting of the Board held on the 21st December, 1977 (see *exhibit No. 3*), when they reached the *sub judice* decision, the candidature of the applicant was considered and they, having compared her merits, qualifications, personality and abilities, as well as the answers that she gave when she was interviewed on the 12th July, 1977, and the confidential reports in respect of her, decided to offer to the interested party appointment to the post concerned, whom they considered to be the best of the candidates and who satisfied fully the requirements of the scheme of service. 25 30

According to Mr. Tymvios, during the interview of the interested party, the Board as the interested party had mentioned in his application that he knew how to operate a telex, did inquire what was the connection between a telex and a typewriter and after the interested party gave them the explanation that the keyboard of both machines was the same, the Board had no reason to doubt his ability to typewrite. 35 40

That the interested party did in fact know typewriting and made no false allegation to the Board during his interview by them, was later ascertained when he underwent a test by the applicant's witness Mr. Christos Vassiliades, the Chief Clerk
5 of the respondents.

What remains to be examined now is whether the interested party possessed experience in clerical work, as required by qualification (d) of the scheme of service. It is an undisputed fact that the interested party, from 1965 up to the date he was interviewed by the Board, was a civil servant holding the post of Clerical Assistant and that during his term of service he served with the Cyprus Mission in New York. As it appears from the evidence of Mr. Tymvios, the Selection Board did inquire about the duties of and the work carried out by the interested party there, as well as his duties and other work during
10 the remaining part of his term of service in the Government.
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In view of the answers that the interested party gave, that is to say that during his term of service with the New York Mission he was handling the accountancy section of the Mission and that he had worked in the Registry of the Ministry of Foreign Affairs,
20 I find that the Board could have reasonably come to the conclusion that the interested party had "experience in clerical work" as required by the scheme of service.

Having carefully considered all the facts relevant to this issue, i.e. the minutes of the meeting of the respondents of the 21st December, 1977 (*exhibit No. 3*) and the evidence of Mr. Tymvios, I find that the respondents did carry out a sufficient inquiry as to whether the interested party possessed the qualifications required by the scheme of service of the post concerned and that it was reasonably open to them to reach the conclusion
25 that he did possess these qualifications.
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As it has been repeatedly stated by this Court in cases of this nature, once a due and proper inquiry has been carried out by an administrative organ and a decision, which was reasonably open to them was reached on the basis of the facts before it, an applicant must prove, the onus being on him, that he was strikingly superior to those selected for appointment or promotion.
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In the case of *Georghiou v. The Republic*, (1976) 3 C.L.R. 74, Triantafyllides P., in delivering the unanimous judgment of the Full Bench of this Court stated the following (at p. 83):-
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“..... when an organ, such as the Public Service Commission, selects a candidate on the basis of comparison with others, it is not necessary to show, in order to justify his selection, that he was strikingly superior to the others. On the other hand, an administrative Court cannot intervene in order to set aside the decision regarding such selection unless it is satisfied, by an applicant in a recourse before it, that he was an eligible candidate who was strikingly superior to the one who was selected, because only in such a case the organ which has made the selection for the purpose of an appointment or promotion is deemed to have exceeded the outer limits of its discretion and, therefore, to have acted in excess or abuse of its powers; also, in such a situation the complained of decision of the organ concerned is to be regarded as either lacking due reasoning or as based on unlawful or erroneous or otherwise invalid reasoning”.

If further authority is needed in support of the legal position on this issue, see *Evangelou v. The Republic*, (1965) 3 C.L.R. 292, 299-300; and *Panayidou v. The Republic*, (1978) 3 C.L.R. 144, 153.

As regards now the complaint of the applicant that the Board gave no reason why they had appointed the interested party in preference to her contrary to their established practice that if candidates have equal merits, qualifications and experience, the candidate who is in their service is preferred from an outsider, I find no merit in this, as, having in mind the minutes of both meetings of the Board, (*exhibits 2 and 3*), and the reasons given therein by them in not appointing the applicant after the first meeting and in offering the post to the interested party after their second meeting, I consider them to be a proper reasoning in the circumstances of this case.

The last ground relied upon by the applicant is that the act and/or decision of the Board was discriminatory against her on the ground of sex, but this cannot be deduced either from the evidence or the minutes of the meetings of the Board.

For all the above reasons, I find that this recourse fails.

The recourse is, therefore, dismissed, but in the circumstances I make no order as to costs.

Application dismissed. No order as to costs.