

1981 February 7

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHARILAOS ARISTOTELOUS AND ANOTHER,
Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,
Respondent:

(Case Nos. 238/77 and 239/77).

Public Officers—Appointments and promotions—First entry and promotion post—Liaison Officer, Public Information Office—Officer not serving in the immediately lower grade and not possessing the qualifications required for first entry cannot be promoted to such post—Section 31(2) of the Public Service Law, 1967 (Law 33/67). 5

The applicants in this recourse challenged the validity of the decision of the respondent to appoint and/or promote to the post of Liaison Officer, Public Information Office, the interested party. The post in question was a first entry and promotion post and the qualifications required under the relevant scheme of service for first entry were a university diploma or degree in certain subjects; and the qualifications for promotion were, *inter alia*, a general standard of education not below that of a six-year secondary school. 10
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The interested party was a Press Assistant 2nd Grade, in the Public Information Office and was not in possession of the qualifications required for first entry to the post of Liaison Officer.

On the question whether the interested party could be promoted to the post of Liaison Officer which was two grades above the rank she was holding: 20

Held, that the principle that no public officer may be promoted

for more than one grade at a time, as enunciated in the case of *Arkatitis v. The Republic* (1967) 3 C.L.R. 429, has been incorporated in section 31(2)* of the Public Service Law, 1967 (Law 33/67) and no express provision to the contrary is contained in the said Law; that by the act complained of the interested party was promoted to the post of Liaison Officer from the post of Press Assistant, 2nd Grade, contrary to section 31(2) of Law 33/67; and, therefore, the *sub judice* decision must be annulled.

Sub judice decision annulled.

10 *Per curiam:*

(1) The classification of posts as first entry and promotion posts was to attract to the public service on the one hand persons holding a degree of higher education and, on the other hand, not cause injustice to persons already in the service who are not in possession of such degree.

(2) That if a public officer is the holder of the qualifications of first entry he is always eligible for the post in question and makes no difference as to whether he is at the time the holder of an office two or more grades lower or if he is even serving in a different department.

Cases referred to:

Arkatitis v. The Republic (1967) 3 C.L.R. 429.

Recourse.

Recourse against the decision of the respondent to appoint and/or promote the interested party to the post of Liaison Officer, Public Information Office, in preference and instead of the applicants.

M. Christofides, for the applicant.

Cl. Antoniadis, Counsel of the Republic, for the respondent.

Cur. adv. vult.

MALACHTOS J. read the following judgment. In these two recourses, which were heard together, as they attack the same administrative act, the applicants claim a declaration of the

* Section 31(2) of Law 33/67 reads as follows:

"31(2) A vacancy in a promotion office shall be filled, without advertisement, by the promotion of an officer serving in the immediately lower grade or office of the particular section or sub-section of the public service".

Court that the act and/or decision of the respondent to appoint and/or promote Mrs. Anastasia A. Haviara to the post of liaison officer, Public Information Office, in preference and instead of the applicants, which was published in the Official Gazette of the Republic dated 24.6.1977 under Notification No. 1190, is null and void and of no legal effect whatsoever. 5

The relevant facts of the case are the following:

The Director-General of the Ministry of Interior by his letter dated 11.8.1976 informed the Chairman of the Public Service Commission that the Ministry of Finance had approved the filling of one vacancy in the post of liaison officer in the Public Information Office and requested him to take the necessary steps for its filling. 10

According to the relevant scheme of service, *exhibit 7*, the post of liaison officer in the Public Information Office is a first entry and promotion post. The qualifications required for first entry are a university diploma or degree in Arts, Law, Political Science or a Diploma in Journalism from a recognised institution, and a very good knowledge of Greek and English or Turkish and English; experience in public relations work would be an advantage. For promotion the qualifications required are a general standard of education not below that of a six-year secondary school, a very good knowledge of Greek and English or Turkish and English and extensive experience in public relations works. 15 20 25

The Public Service Commission at its meeting of 9.10.1976 decided that the vacancy in question be advertised allowing two weeks for submission of applications and the advertisement was published in the official Gazette of 22.10.1976 under Not. 1966 and in response to it 16 applications, including those of the applicants, and the interested party, were submitted. 30

At its meeting of 18.12.1976 the Commission decided that 14 of the applicants should be asked to undergo written examinations and taking into consideration the results of these examinations at its meeting of 30.4.1977, decided that four of the candidates, including the applicants and the interested party, should be invited for interview on 24.5.1977 and that the Director of Public Information Office should be requested to be present. 35

At its meeting of 24.5.1977 and in the presence of the Assistant

Director of the Public Information Office the Commission interviewed the four candidates and, as it appears in their minutes "after taking into consideration all the facts apertaining to each one of the candidates and after giving proper weight
 5 to the merits, qualifications, abilities, service and experience of these candidates, as well as their suitability for appointment to the above post, as shown at the interview, and having regard to the result of the written examinations, which were held on 10.2.1977 and 11.2.1977, the Commission came to the conclusion
 10 that Mrs. A. Haviara was, on the whole, the best. The Commission accordingly decided that Mrs. A. Haviara be promoted to the permanent post of liaison officer with effect from 15.6.1977".

The applicant in Recourse No. 238/77, namely, Charilaos
 15 Aristotelous, as from 1.12.1968 has been a Press Assistant, 1st Grade in the Public Information Office.

The applicant in Recourse No. 239/77, namely, Ioannis Solomou, as from 1.4.1969 has been a Press Assistant, 2nd Grade, in the Public Information Office.

20 This applicant as from 1974 is the holder of a diploma of Pandios High School of Political Sciences.

The interested party, on the other hand, as from 1.8.1970 to 14.6.1977, was a Press Assistant 2nd Grade, in the Public Information Office. She is a graduate of the Pancyprian
 25 Gymnasium, and she has passed the English Lower, English Higher, Mathematics A of the G.C.E., and the General Orders.

Counsel for applicants in arguing his case before the Court relied on the following two grounds of law.

1. Whether from a press assistant 2nd Grade the interested
 30 party could be promoted to the post of liaison officer, which is two grades above the rank she was holding at the time; and
2. Whether, taking into consideration the merits, qualifications and seniority according to section 44(2) of the Public Service Law 1967 (Law 33/67) the interested party was, on the whole,
 35 the best candidate.

As regards the first ground of law, counsel for applicants submitted that the interested party was not eligible for promotion to the post of liaison officer as at the time she was holding

the post of press assistant, 2nd Grade, which is two grades lower than the post of liaison officer. In between the two posts is the post of press assistant 1st Grade. According to the scheme of service she was not eligible for appointment as she did not possess the required qualifications and she was not eligible for promotion in view of the provisions of section 31(2) of the Public Service Law 1967, which provides that promotion offices shall be filled by the promotion of officers serving in the immediately lower grade or office of the particular section or subsection of the Public Service, as the case may be. He also referred to the Conclusions from Case Law of the Greek Council of State 1929 to 1959 at page 345 to 346 where it is stated that in the absence of express legislative provision no public officer may be promoted for more than one grade at a time as this is contrary to basic administrative law principles and the notions of proper administration.

Counsel for applicants further submitted that both applicants were entitled to be considered as candidates and, therefore, eligible for the post of liaison officer as the applicant in Case No. 238/77 was holding at the time the post of Press Assistant, 1st Grade, and so he could be promoted and applicant in Case No. 239/77, although a press Assistant 2nd Grade, he was the holder of a diploma of Pandios High School of Political Sciences and so he could be appointed to the post of liaison officer.

Counsel for the respondent Commission on the other hand, submitted that the principles referred to in the Conclusions from Case Law of the Greek Council of State 1929-1959 at page 346 were adopted in the case of *Arkatitis v. The Republic* (1967) 3 C.L.R. 429. This case was decided before the coming into operation of the Public Service Law, 1967. After the coming into operation of the said law, the question of appointment or promotion in the public service is dealt with by the said law and the categories of offices for purposes of appointment or promotion are defined by section 30 thereof. As to what is an "appointment" or "promotion" is defined by section 28 of the said Law. These sections read as follows:

"28. For the purposes of this Law, unless the context otherwise requires—

'appointment' means the conferment of an office upon a person not in the public service or the conferment upon

an officer of an office other than that which he substantively holds, not being a promotion; and the expression 'to appoint' shall be construed accordingly;

5 'promotion' means any change in an officer's substantive status which carries with it an increase in the officer's remuneration or which carries with it the emplacement of the officer in a higher division of the public service, or on a salary scale with a higher maximum, whether the officer's remuneration at the time is increased by such a change or not; and the expression 'to promote' shall be construed accordingly".

10 30.(1) For the purposes of appointment or promotion, offices shall be divided into the following categories:-

- 15 (a) First Entry offices to which persons not in the public service or officers may be appointed;
- (b) First Entry and Promotion offices to which persons not in the public service may be appointed and officers may be appointed or promoted;
- 20 (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.

(2) The category of each office shall be fixed by the Council of Ministers in the respective scheme of service.

25 (3) For the purposes of this section, 'section or sub-section of the public service' means a section or sub-section of the public service composed of grades of the same office, or of different offices of a similar nature to which different salaries or salary scales are attached. In case of doubt as to the offices comprised in any particular section or sub-section of the public service, the Council of Ministers shall decide in the matter".

35 So, taking into consideration subsection (b) of section 30 in the light of the provisions of section 28, the definition section, the interested party could be promoted to the post of liaison officer from the post of Press Assistant 2nd Grade.

He further submitted that the Public Service Commission considered the question of eligibility in the present case and

acting on legal advice considered the interested party as a candidate.

I have considered the arguments of counsel on the above issue and I must say that I am in agreement with the submission of counsel for applicants. The principle that no public officer may be promoted for more than one grade at a time referred to in the *Arkatitis* case, *supra*, has been incorporated in section 31(2) of the Public Service Law, 1967, and no express provision to the contrary is contained in the said Law. 5

There is no doubt that the interested party by the act complained of was promoted to the post of liaison officer from the post of Press Assistant, 2nd Grade, contrary to section 31(2) of the Law. Had she not been in the public service she could not be considered for first entry as she did not possess the qualification referred to in the scheme of service. 10 15

I must admit that I fail to understand the argument of counsel for the respondent that one who is neither eligible for appointment or promotion to a given post, may, even in exceptional cases, be eligible if the post is a first entry and promotion post. To my mind, the classification of posts as first entry and promotion posts was to attract to the public service on the one hand persons holding a degree of higher education and, on the other hand, not to cause injustice to persons already in the service who are not in possession of such degree. 20

Of course, in the latter case, the provisions of section 31(2) of the Law should always be observed. It goes without saying that a public officer if he is the holder of the qualifications of first entry he is always eligible for the post in question and makes no difference as to whether he is at the time the holder of an office two or more grades lower or if he is even serving in a different department. 25 30

In view of my decision on the first ground of law I consider it unnecessary to deal with the second ground in this recourse.

-For the reasons stated above both recourses succeed and, consequently, the act of the respondent commission complained of is declared null and void. 35

The respondent to pay each applicant £20.- against his costs.

Sub judice decision annulled.

Order for costs as above.