

1982 October 29

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDRESTINOS PAPADOPOULOS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondents.

(Case No. 488/81).

Public Officers—Appointments and promotions—Judicial control—Striking superiority—Meaning—Qualifications—Concept of, in the context of section 44(2) of the Public Service Law, 1967 (Law 33/67)—Qualifications additional to those envisaged in the scheme of service—Effect—Applicant possessing additional qualifications to certain of the interested parties but latter superior in merit—And though one of them less qualified than applicant he was senior to him—All interested parties recommended by Head of Department—Applicant not strikingly superior to the interested parties. 5

Public Officers—Confidential reports—Prepared by different reporting officers—Weight. 10

Public officers—Appointments and promotions—Head of Department—Recommendations—Need to be made as explicitly as possible.

Public officers—Appointments and promotions—Reasons for—Public Service Commission must articulate as thoroughly as possible reasons that led to a particular decision and not content itself with an enumeration of the criteria taken into account which almost invariably take the form of listing the criteria set down by the law. 15 20

The applicant in this recourse challenges the validity of the promotion of the six interested parties to the post of Counsellor

or General Consul 'B' in the Ministry of Foreign Affairs. Applicant had extensive academic qualifications whereas two of the interested parties had no university qualifications. The remaining interested parties had, like the applicant, university
5 qualifications, but the qualifications of the applicant were more extensive than those of three of the interested parties and probably comparable to those of one of them. Regarding the merits of the candidates, as it appeared from the confidential reports, applicant was inferior to five of the interested parties
10 and equal to the sixth but this interested party was senior to applicant. All six interested parties were recommended by the Head of Department as the most deserving candidates.

Counsel for the applicant mainly contended:

- 15 (a) That applicant's superior qualifications make him strikingly superior to the other candidates.
- (b) That the confidential reports were not a reliable record of the performance of the candidates because they were prepared by different reporting officers.
- 20 (c) That the sub judge decision was not duly reasoned and the recommendations of the Head of Department were expressed in an elliptical form.

Held, that in order to be striking, superiority must be self-evident and strike one at first sight, so compelling as ignoring it would lead inexorably to a case of manifest injustice to a
25 candidate's suitability for promotion; that the possession of qualifications, additional to those envisaged by the schemes of service, is never by itself a decisive consideration and is not sufficient to make out a case of striking superiority; that it is one of many relevant factors that serve to paint the picture of
30 a candidate's suitability; that the concept of qualifications, in the context of s.44(2) - Law 33/67 - is not solely confined to academic qualifications, but it extends to experience, particularly of a kind that makes him specially suitable for the discharge of the duties envisaged by the scheme of service;
35 that in identifying one's qualifications, authorship of one or more publications is a relevant consideration: that to the extent that the qualifications of the interested party gave an edge to the applicant over those of the interested parties that were less qualified, this advantage was neutralised in relation to four

of them because of their better merit and in relation to one of them because of his seniority; more so all the interested parties had the recommendation of the Head of Department; accordingly the contention of the applicant that he had striking superiority over any of the interested parties is totally unfounded. 5

(2) That where the confidential reports are prepared by different reporting officers, the correct position appears to be that confidential reports remain a valuable guide to one's performance in the service, though not as weighty as when they are prepared by the same reporting officer; that they remain, however, an irreplaceable pointer to one's performance in the service and his merits, as they derive therefrom. 10

(3) That though the form in which the recommendations of the Director-General were expressed in this case, was couched in summary terms, is not such as it might either mislead the Commission or convey a wrong picture as to the suitability of each candidate for promotion; and that though the reasoning of the sub judice decision falls short of what is desirable it is not inadequate to the extent rendering it liable to be set aside. 15

Application dismissed. 20

Per curiam: (1) It is desirable, nonetheless, that civil servants, invited to assist the Commission in its deliberations, should be as explicit as possible about the competing merits of the parties, particularly how their merits, qualifications and experience, equip them with knowledge and skill for the discharge of the duties of the post under consideration. 25

(2) That the Commission must in each case articulate as thoroughly as it is possible, the reasons that led it to a particular decision and not content itself with an enumeration of the criteria taken into account which, almost invariably, take the form of listing the criteria set down by the law. 30

Cases referred to:

HadjiSavva v. Republic (1982) 3 C.L.R. 76 at pp. 78, 79; 35

Korai and Another v. C.B.C. (1973) 3 C.L.R. 546;

Bagdades v. Central Bank of Cyprus (1973) 3 C.L.R. 417;

Georghakis v. Republic (1977) 3 C.L.R. 1;

HadjiGeorghiou v. Republic (1977) 3 C.L.R. 35;

Cleanthous v. Republic (1978) 3 C.L.R. 320;

Larkos v. Republic (1982) 3 C.L.R. 513;

Nissiotis v. Republic (1977) 3 C.L.R. 388;

Evgeniou v. Republic (1979) 3 C.L.R. 239;

5 *Zavros v. Council for Registration of Architects and Civil Engineers*
(1969) 3 C.L.R. 310;

HadjiSavva v. Republic (1972) 3 C.L.R. 174;

Savva v. Republic (1980) 3 C.L.R. 675;

Decisions of the Greek Council of State Nos. 810/47 and 1637/50.

10 Recourse.

Recourse against the decision of the respondent to promote the interested parties to the post of Counsellor or General Consul 'B' in preference and instead of the applicant.

A. *Pandelides*, for the applicant.

15 A. *Vladhimirou*, for the respondent.

Cur. adv. vult.

20 PIKIS J. read the following judgment. On 3rd September, 1980, Mr. Pelagias, the Director-General of the Ministry of Foreign Affairs, addressed a letter to the Public Service Commission - hereafter referred to as "the Commission" - requesting them to set in motion the machinery for the filling of six vacant posts of Counsellor or General Consul 'B', a promotion post in the establishment of the Ministry. In due course, an inter-departmental committee was set up under Mr. Pelagias to make
25 an evaluation, in the first place, of the worth of 19 officers eligible for promotion. The committee concluded its deliberations on 5.5.81, and submitted a list of 11 candidates judged eligible and suitable for promotion to the post of Counsellor. The candidates were holding the post of Secretary 'A' in the
30 Ministry. The Commission met on 1st June, 1981, to consider the matter. They decided to invite the Director-General to attend their meeting and aid them in their deliberations. This, they were perfectly entitled to do, more so in view of the nature of the post and the duties the appointees would have to perform.

35 The Commission held a meeting on 24.7.81 in the presence of Mr. Pelagias. Mr. Pelagias made a brief assessment of the suitability of the candidates for promotion and recommended the six interested parties as the most deserving candidates. He

then withdrew, leaving the Commission to proceed with its task. The Commission, after purporting to evaluate the suitability of the candidates for promotion, selected the six interested parties and appointed them to the post of Counsellor with effect from 1st August, 1981. (The recommendations of the Director-General and the decision of the Commission are recorded in Appendix 6, attached to the opposition). 5

The decision of the Commission is challenged by the applicant as ill-founded and, therefore, liable to be set aside for abuse of power. The Commission is charged with failure to carry out a proper inquiry into the suitability of the candidates, particularly with regard to the qualifications of the candidates, a failure that led the Commission, in the end, to overlook the striking superiority of the applicant over other candidates. Applicant's striking superiority arose from his superior academic qualifications, his extensive experience in various posts abroad, his authorship of numerous publications and, generally, his service in the Ministry. These contentions are articulated in the address made on behalf of the applicant, where it is made clear that the fault of the Commission lies in their failure to pay due heed and evaluate in the proper perspective his extensive academic qualifications, and the superiority they conferred upon him over other candidates, so conspicuous as to be striking. There is, however, no suggestion that any of the interested parties lacked the qualifications envisaged by the pertinent scheme of service, or that such a scheme stipulated additional academic qualifications as an advantage. His case is simply that his superior qualifications, coupled with his extensive experience in the service, made him strikingly superior to the other contestants for the posts to be filled. And to complete the picture with regard to the academic qualifications of the applicant, it must be noted that applicant had extensive academic qualifications, whereas, two of the interested parties, namely Tefkros Loizou and Christos Ioannou, had no university qualifications. The remaining interested parties had, like the applicant, university qualifications but, arguably, the qualifications of the applicant were more extensive than those of the remaining three interested parties and probably comparable to those of Mr. Phaedonos. 10
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The answer of the respondents to the recourse of the applicant 40

is that he did not enjoy striking superiority to any of the interested parties and that superior academic qualifications as such did not entitle him to the preferment he contends for. In their submission, there is nothing to fault the way the Commission went about in discharging its task to select the most suitable candidates or the decision itself.

STRIKING SUPERIORITY: In *HadjiSavva v. The Republic* (1982) 3 C.L.R. 76, 78, 79, I made a brief attempt to analyse the constituents of "striking superiority" in the field of administrative law. Such superiority must emerge on a consideration of the worth of the candidates by reference to the criteria laid down by law for the evaluation of the suitability of candidates for promotion or appointment, i.e. merits, qualifications and seniority (s.44 - Law 33/67). Superiority cannot be established exclusively by reference to anyone of the three criteria earmarked by law. Striking superiority must arise as an inevitable result from the assessment of the overall merits of the candidates. In order to be striking, superiority must be self-evident and strike one at first sight, so compelling as ignoring it would lead inexorably to a case of manifest injustice to a candidate's suitability for promotion.

The possession of qualifications, additional to those envisaged by the schemes of service, is never by itself a decisive consideration. Such qualifications have never been held as sufficient by themselves to make out a case of striking superiority. (See, *Elli Chr. Korai and Another v. C.B.C.* (1973) 3 C.L.R. 546; *K. Bagdades v. The Central Bank of Cyprus* (1973) 3 C.L.R. 417; *Andreas D. Georghakis v. The Republic (P.S.C.)* (1977) 3 C.L.R. 1; *E. Hadjigeorghiou v. The Republic* (1977) 3 C.L.R. 35; *Cleanthous v. The Republic* (1978) 3 C.L.R. 320).

As I had occasion to observe in *Larkos v. The Republic* (1982) 3 C.L.R. 513, possession of academic qualifications, additional to those required by the scheme of service, is not a distinct consideration meriting separate examination. It is one of many relevant factors that serve to paint the picture of a candidate's suitability for promotion; at the highest, they may confer a marginal advantage but, certainly, they do not specifically enhance the claims of the holder to promotion. Additional qualifications to those laid down in the scheme of service,

confer a distinct advantage only where they are specified in the scheme of service as an advantage, not otherwise.

To decide whether a candidate has established a case of striking superiority, one must examine his merits, qualifications and seniority, and contrast them to those of the interested parties. We must, in turn, examine, in the sequence prescribed by law, the merits of the candidates, the most significant pointer to the candidates' suitability for promotion, then their qualifications and, lastly, their seniority. The merits of the candidates are primarily ascertainable, in the case of promotion, from their service record in the department where they serve. The confidential reports, designed to rate one's performance in every sphere of activity that counts for the service, constitute the best material for judging one's merits. Special prominence must be given to the confidential reports of the two years preceding selection (see s.44(3)). This provision serves to stress the importance of one's recent performance in the service as an indicator of his suitability for promotion.

The performance of the parties for the two years preceding the promotions is revealed in their confidential reports for the years 1979-1980, respectively. The applicant and the interested parties were equally rated for 1979. Their overall rating was excellent. But there were differences with regard to 1980. The applicant and one interested party, namely Tefkros Loizou, were rated as "Very Good", whereas the remaining interested parties were reported upon as "Excellent". So, far from possessing superior merits to the extent reflected in the confidential reports, the applicant was inferior to five of the interested parties and equal to the sixth, Tefkros Loizou.

Counsel for the applicant argued that confidential reports were not a reliable record of the performance of the candidates because they were prepared by different reporting officers. In a big department of State, such as the Ministry of Foreign Affairs, functioning in Cyprus and abroad, inevitably the performance of officers of the Ministry is rated by different officers. All reporting officers, however, are required and expected to have regard to the same considerations in evaluating their subordinates, and this helps to reduce, though, admittedly, it does not eliminate differences in the approach of the reporting officers.

The value of confidential reports as a guide to one's performance in the service, would be neutralised, contrary to the letter and spirit of the law if we were to accept the submission of counsel. A similar proposition to that, propounded by
5 Mr. Pandelides, was advanced without success on a number of occasions before the Supreme Court. (See, *Omeros Nissiotis v. Republic* (1977) 3 C.L.R. 388; *Evgeniou v. Republic* (1979) 3 C.L.R. 239).

Where the confidential reports are prepared by different
10 reporting officers, the correct position appears to be that confidential reports remain a valuable guide to one's performance in the service, though not as weighty as when they are prepared by the same reporting officer. They remain, however, an irreplaceable pointer to one's performance in the service and his
15 merits. as they derive therefrom.

It must be rare for a candidate to establish a case of striking superiority, and, as presently advised, I find it hard to visualise one, when he has comparable or inferior merits to the interested parties, as reflected in their confidential reports.

20 **QUALIFICATIONS:** The concept of qualifications, in the context of s.44(2) - Law 33/67 - is not solely confined to academic qualifications, but it extends to experience, particularly of a kind that makes him specially suitable for the discharge of the duties envisaged by the scheme of service. In identifying
25 one's qualifications, authorship of one or more publications is a relevant consideration. Here, the applicant possessed superior academic qualifications to two of the interested parties, namely Tefkros Loizou and Christos Ioannou. Also, his academic qualifications were apparently superior to those of the
30 remaining interested parties, except for Mr. Vadet Phaedonos who possessed comparable qualifications to the applicant. To the extent that these qualifications gave an edge to the applicant so far as relevant in accordance with what is said earlier in this judgment, such advantage was neutralised in relation
35 to each one of the interested parties, with the exception of Tefkros Loizou. The latter's seniority in the service, would, in his case as well, eliminate the advantage, if any, that applicant enjoyed over Tefkros Loizou with regard to academic qualifications. Not that this edge could, under any circumstances,
40 put it beyond the power of the Commission to appoint anyone

of the interested parties. More so, as the interested parties had the recommendation of the departmental head, the Director-General, a ponderous factor. In my judgment, the contention of the applicant, that he enjoyed striking superiority over any of the interested parties, is totally unfounded. Normally, the judgment of the Court would end here, but there was one aspect of the case that merited, in my view, consideration, and that is the contents of the recommendation of the Director-General and the reasoning of the decision itself. For this purpose, I invited argument from counsel, on the aforementioned aspects of the case.

RECOMMENDATIONS OF THE DEPARTMENTAL HEAD AND REASONING OF THE DECISION OF THE PUBLIC SERVICE COMMISSION:

The views of the Director-General were expressed in a somewhat elliptical form, so much so that, at first sight, one is apt to gain the impression that he paid no heed to the academic qualifications of the candidates. On closer examination, this is not so. In fact, he specifically stated that two of the candidates possessed no higher academic qualifications, and, in that way, drew the attention of the Commission to that aspect of the case. It is desirable, nonetheless, that civil servants, invited to assist the Commission in its deliberations, should be as explicit as possible about the competing merits of the parties, particularly how their merits, qualifications and experience, equip them with knowledge and skill for the discharge of the duties of the post under consideration. The form in which the recommendations of the Director-General were expressed in this case, though couched in summary terms, is not such as it might either mislead the Commission or convey a wrong picture as to the suitability of each candidate for promotion. Similar criticisms can be levelled at the reasoning of the Commission as well. Although the decision reveals the considerations they took into account, to the extent necessary to enable the Court to control the legality of the decision, as well as enable a party affected thereby to advise himself* as

* See *Zavros v. Council of Registration of Architects and Civil Engineers* (1969) 3 C.L.R. 310; *HadjiSavva v. The Republic* (1972) 3 C.L.R. 174; *Elli Chr. Korai v. C.B.C.* (1973) 3 C.L.R. 546; *Savva v. Republic* (1980) 3 C.L.R. 675).

to his rights, it falls, in my opinion, short of what is desirable. What the Commission must do in each case, is to articulate as thoroughly as it is possible, the reasons that led it to a particular decision and not content itself with an enumeration of the criteria taken into account which, almost invariably, take the form of listing the criteria set down by the law. The Greek Council of State, by a series of decisions, enjoins administrative bodies trusted with decision making, to reason their decision in a way disclosing the reasons behind their decision. The facts of the case must be explicitly evaluated. They must not limit their reasoning to listing the guide-lines upon which they relied for their decision. (See, *Conclusions from the Case-law of the Greek Council of State 1929-59*, pp. 183, 187: *Decisions of the Greek Council of State 810/47, 1637/50*). The adequacy of the reasoning of public bodies and the conviction it carries, cannot but strengthen faith in the administrative process, a factor of very great significance for the image and effectiveness of administrative bodies.

The above having been said, the reasoning of the decision is not inadequate to the extent rendering it liable to be set aside. The Commission had regard to the proper considerations for the choice of the most suitable candidates, as well as the views of Mr. Pelagias. The facts relevant to the merits, seniority and qualifications of the candidates, also emerge clearly and unquestionably from the files that were before the Commission, a source from which the reasoning of the Commission may be supplemented. Therefore the recourse fails. It is dismissed with no order as to costs.

Recourse dismissed. No order as to costs.