1982 November 24

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PARASKEVOULLA MARATHEVTOU AND OTHERS,
Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE PUBLIC SERVICE COMMISSION,
Respondents.

(*Case No.* 477/81).

Public Officers—Appointments and promotions—Oral and not written examination of the candidates—Within the powers of the Inter-departmental Committee and the Public Service Commission—Reasoning of sub judice decision—No rule that a direct comparison of the merits of the parties requisite for valid administrative action—Specific reasons for preferring one candidate to another need only be given where the party rejected enjoys apparent striking superiority over the party chosen.

The applicants and the interested parties were recommended for appointment to the post of executive engineer, in the Water Development Department by the appropriate inter-departmental Committee, set up under section 36 of the Public Service Law, 1967 (Law 33/67). Before making its recommendation the Committee invited all the candidates to an interview which was designed to elicit their ability, knowledge and experience. The respondent Public Service Commission after, also, interviewing the candidates, who have been recommended by the Committee decided to appoint the interested parties to the above post and hence this recourse.

Counsel for the applicants mainly contended:

(a) That an ill-devised procedure was adopted for the elicitation of the suitability of the candidates because

the scientific knowledge of the candidates could not be revealed or tested by an oral interview; a written examination was necessary for the purpose.

(b) That undue weight was given by the Commission to the departmental reports of the parties.

(c) That the reasoning of the sub judice decision is defective in that the Public Service Commission failed to make a direct comparison between the merits of the parties chosen and those of the parties left out.

Held, (1) that it was within the powers of the Public Service Commission, as well as the inter-departmental committee that preceded it, to require the candidates to undergo an oral and not a written examination; accordingly contention (a) should fail.

(2) That nothing before this Court suggests that the Public Service Commission misappreciated the situation with regard to the service of some of the applicants in the Water Development Department, or that they attached any greater significance to such reports other than warranted, i.e. as a pointer to the experience of the parties; and that, consequently, contention (b) must be dismissed as well.

(3) That there is no rule that a direct comparison of the merits of the parties is a requisite for valid administrative action though, in this case, a comparison was indirectly made because of specific itemization of the qualities of each candidate enabling everyone interested to decide who rates better; that a review of this table reveals that the rating of the interested parties was on the whole higher; that specific reasons for preferring one candidate to another need only be given where the party rejected enjoys apparent striking superiority over the party chosen; accordingly contention (c) should, also, fail.

Application dismissed.

Per curiam: (1) Nothing said above should be construed as encouraging administrative bodies charged with the task of manning the civil service to opt for an oral rather than a written examination. Far from it, a written examination generally offers a more objective basis for testing the knowledge of candidates, whereas a

combination of the two—an oral and a written examination—provides, no doubt, a securer basis still for the assessment of the abilities of the candidates.

(2) The underlying principle is that public bodies charged with the selection of candidates must effectively uphold the right to equality of opportunity safeguarded by the Constitution. Those similarly positioned, as it is the case with applicants, for the filling of first entry posts, should be equally treated. Outsiders would be given less than equal opportunity if temporary service in that position was held to be an advantage. Such acknowledgment would have the added adverse effect of allowing temporary employment in the Republic to become a means of by-passing the Public Service Commission, as the organ charged by law to man, in the way envisaged therein, the positions in the public service. If that were to happen, the role of the public service Commission, as the impartial arbiter for the manning of the public service, would be diminished and eventually dissipated.

Cases referred to:

Christofi v. Republic (1967) 3 C.L.R. 615;

Pierides v. Republic (1971) 3 C.L.R. 233;

Panayiotou v. Republic (1968) 3 C.L.R. 639;

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

Christodoulou v. CY.T.A. (1978) 3 C.L.R. 61;

Stylianou v. Republic (1980) 3 C.L.R. 11;

Papantoniou and Others v. Republic (1968) 3 C.L.R. 233;

Georghiou v. Republic (1976) 3 C.L.R. 74;

Chimonas v. Republic (1982) 3 C.L.R. 111.

Recourse.

Recourse against the decision of the respondent to appoint the interested parties to the temporary post of Executive Engineer in the Department of Water Development in preference and instead of the applicants.

E. Efstathiou, for the applicants.

E. Papadopoulou (*Mrs.*), for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. The post of executive engineer, a temporary position in the department of Water Development, was advertised on 12.12.80 and applications were invited to fill a number of existing vacancies. In response thereto, 65 persons applied to be considered as candidates and, the machinery was set in motion for filling the posts.

An inter-departmental committee was set up under s.36 of the Public Service Law - 33/67 - and the Regulations made thereunder in 1979, to examine the eligibility of the applicants and make a preliminary assessment of their suitability and comparative merits. The committee invited the applicants to an interview designed to elicit their ability, knowledge and experience. The committee has a discretion about the choice of the means appropriate to ascertain the capabilities of the applicants. Regulation 5 of the 1979 Rules regulating the setting up and functioning of such committees expressly empowers them to test the contestants by means of a written or oral examination. Their discretion is not subject to any limitations. It is indeed probable that the personal qualities required of the candidates in this case influenced the committee to opt for an oral examination. The duties assigned to the post entail, inter alia, supervision of subordinates and administrative abilities that cannot surface except in the courses of an interview.

At the end of this investigatory process the committee submitted its findings, on 17.4.81, to the Public Service Commission, the body entrusted by law for the selection of the candidates best suited for the post. They recommended 40 of the applicants as eligible and suitable for appointment. The short list included the interested parties as well as the applicants. So, all the parties in these proceedings passed this initial hurdle but, it must be said, with a varying degree of success, as it emerges from a comparison of their merits, as found and recorded by the committee. The committee forwarded, together with its recommendations, its views with regard to the qualities of each candidate, a useful appendix to the recommendations of the committee.

The Public Service Commission judged it necessary to invite the recommendees to a personal interview held in the presence

of the director of the department of Water Development, Mr. C. Lytras, who had been invited to assist the Commission in the selection process. The presence of a departmental head at the meetings of the Commission is meant to fill gaps in the knowledge and experience of members of the Commission in diverse fields of expertise and can be regarded as a valuable supplement to their knowledge. The Commission held a series of meetings between 31.5.81 and 30.6.81, in the course of which they interviewed the candidates apparently in an alphabetical order. Mr. Lytras submitted his views in a memorandum incorporated in the minutes of the Commission, wherein he indicated his impressions about each candidate, couched as to reflect his opinion of their ability, knowledge and experience. He refrained from making direct recommendations, leaving it to the Commission to derive such guidance, as they deemed appropriate, from his assessment of the merits of the candidates. The Public Service Commission itself carried out a similar exercise and made an evaluation of the candidates by reference to the criteria set down by law - merits, qualifications and experience. In the end, they had before them the results of this triple assessment that could not but have rendered sounder and certainly more objective the premises upon which the selection would be made. One is struck, it must be said, by the remarkable coincidence, in most cases, between the assessments made by the inter-departmental committee, the departmental head and the Commission itself.

At the end of the day, on 3.7.81, the Public Service Commission selected 15 candidates, including the seven interested parties. The applicants were among the unsuccessful candidates. They joined as parties in the present recourse, seeking the annulment of the decision in question, so far as the interested parties are concerned, primarily because of irregularities in the process of selection and the inadequacy of the inquiry itself. It is their case that the respondents ultimately failed to choose, as required under the law, the candidates best suited for the post. Their contentions, bearing on the propriety of the decision, are detailed and articulated in the written address filed by counsel on their behalf. The respondents propounded in the opposition, and, in the written address submitted on their behalf before the Court, the validity of the decision, impeccable from every viewpoint.

The first complaint is that undue weight was placed upon the results of personal interviews, a process allegedly oppressive in the circumstances of this case, amounting to the adoption of an ill-devised procedure for the elicitation of the suitability of the candidates for appointment. The scientific knowledge of the candidates could not be revealed or tested by an oral interview; a written examination was necessary for the purpose.

The rules defining the powers of inter-departmental committees expressly authorise them, as indicated, to test the suitability of the applicants through an oral examination because that is what a personal interview amounts to. Their discretion is unfettered. And so long as they exercise it bona fide, it will be sustained. Nothing was placed before the Court questioning the good faith of the inter-departmental committee in the choice of their means for testing the applicants. In the absence of such evidence, this complaint must necessarily be dismissed.

A similar discretion is acknowledged in administrative law to the appointing body, the Public Service Commission itself, to choose the means appropriate for ascertaining the qualities of the candidates competing for appointment. They are the arbiters of the means best suited to test the worth of the contestants. Not only the Public Service Commission is free to opt for the one or the other method of examination, they are also at liberty to make their choice without requiring the parties to undergo either a written or an oral examination. This they may do when the material on record is sufficient to enable them to discharge their task effectively. (See, *Antonis Christofi v. Republic* (1967) 3 C.L.R. 615; *Doros Pierides v. Republic* (1971) 3 C.L.R. 233). There is authority supporting the proposition that an oral interview is especially instrumental to revealing the qualities of candidates where the personality of the candidates is in issue on account of the duties carried by the post. (See, *Panayiotou v. Republic* (1968) 3 C.L.R. 639; *Eleni Eliadou Duncan v. Republic* (1977) 3 C.L.R. 153; *Christodoulou v. CY.T.A.* (1978) 3 C.L.R. 61; *Stylianou v. Republic* (1980) 3 C.L.R. 11).

In my judgment, the first ground upon which the recourse is founded, is doomed to failure. The Public Service Commission carried out a thorough inquiry into the merits of the candidates

and the end result cannot be faulted because of any failure on their part to adopt appropriate means for the ascertainment of the qualities of the candidates.

Nothing said above should be construed as encouraging administrative bodies charged with the task of manning the civil service to opt for an oral rather than a written examination. Far from it, a written examination generally offers a more objective basis for testing the knowledge of candidates, whereas a combination of the two - an oral and a written examination - provides, no doubt, a securer basis still for the assessment of the abilities of the candidates.

All my judgment is directed towards establishing that it was within the powers of the Public Service Commission, as well as the inter-departmental committee that preceded it, to require the candidates to undergo an oral and not a written examination.

The second premise upon which the recourse is founded, consists of complaints of undue weight allegedly attached by the Public Service Commission to the departmental reports of the parties. To understand the submission made in this connection, one must examine the background to the case in somewhat greater detail and refer to the fact of employment of all the applicants, and five of the seven interested parties on a casual basis prior to the material date. The aforementioned twelve candidates were, at the time they applied for appointment, already serving in the Water Development Department on a temporary basis. It is a fact that at every stage of the inquiry into the suitability for appointment of those already in the service, reference was made to their performance in the department till then, as reflected in the departmental records. Two of the interested parties, namely Miss Germanou and Mr. Aletras, were outsiders. There is no suggestion that anyone of the applicants was placed at a disadvantageous position vis-a-vis the interested parties or anyone of them, or that he suffered prejudice as a result of their employment in the service on a casual basis. Had that been the situation, i.e. that an outsider found himself at a disadvantage because of the earlier employment of an interested party in the service, the case might bear a wholly different complexion, especially if it were made to appear that a citizen's right to equality before the administration, safeguarded by Article 28 of the Constitution, was imperilled

because of advantages recognised to those already in the service. The observations of Stavrinides, J., in *Demetra Costa Papantoniou & Others v. Republic* (1968) 3 C.L.R. 233, should, at all times, guide the Public Service Commission in carrying out one of its fundamental duties to safeguard equality of opportunity for those applying to join the civil service:-

> "It follows that everyone who was qualified by the scheme of service applicable to the post was entitled to apply for appointment to the permanent post and to be fairly and impartially considered without any discrimination as between any who were currently, in whatever capacity, in the public service, any who, having been previously in the public service, were currently through no fault of their own, outside it and any who had never been in it."

The underlying principle is that public bodies charged with the selection of candidates must effectively uphold the right to equality of opportunity safeguarded by the Constitution. Those similarly positioned, as it is the case with applicants, for the filling of first entry posts, should be equally treated. Outsiders would be given less than equal opportunity if temporary service in that position was held to be an advantage. Such acknowledgment would have the added adverse effect of allowing temporary employment in the Republic to become a means of by-passing the Public Service Commission, as the organ charged by law to man, in the way envisaged therein, the positions in the public service. If that were to happen, the role of the Public Service Commission, as the impartial arbiter for the manning of the public service, would be diminished and eventually dissipated. All this is said by way of parenthesis for, we are not here concerned with a case of an insider being preferred over an outsider. On the contrary, the Public Service Commission in this case, treated, in a spirit of equality, the application of every candidate, a fact evidenced, inter alia, by the appointment of two outsiders in preference to the applicants already in the service. Nothing before us suggests that the Public Service Commission misappreciated the situation with regard to the service of some of the applicants in the Water Development Department, or that they attached any greater significance to such reports other than warranted, i.e. as a pointer to the experience of the parties. Consequently, the second complaint earlier outlined, must be dismissed as well.

The third and final complaint is that the reasoning of the decision is defective to a degree warranting the intervention of the Court. The reasoning of a decision is the most important aspect of it and should be vocal as to the reasons that led the Commission to adopt the decision taken. It is settled law that the reasoning should be explicit to the extent necessary to enable the Court to review effectively the decision taken, in the interests of legality, and enable parties affected thereby to advise themselves about their rights and the remedial steps to be taken in case of a grievance.

The essence of the complaint of applicants is that the Public Service Commission failed to make a direct comparison between the merits of the parties chosen, with those of the parties left out. There is no rule that a direct comparison of the merits of the parties is a requisite for valid administrative action (see, *Odysseas Georghiou v. Republic* (1976) 3 C.L.R. 74; Πορίσματα Νομολογίας Συμβουλίου Ἐπικρατείας, 1929–59, σ. 268), though, in this case, a comparison was indirectly made because of specific itemization of the qualities of each candidate enabling everyone interested to decide who rates better. A review of this table reveals that the rating of the interested parties was on the whole higher, in comparison to everyone of the applicants, though Paraskevoulla Marathevtou came, it must be said, close to the interested parties, a fact noted in the decision itself.

Specific reasons for preferring one candidate to another need only be given where the party rejected enjoys apparent striking superiority over the party chosen. (See, *Chimonas v. Republic* (1982) 3 C.L.R. 111).

I have examined with very great care the material before the Public Service Commission and studied with equal care the decision itself. I remain unpersuaded that any grounds exist for interfering with the decision. On the contrary, I gained the impression that the Public Service Commission approached its task seriously and reasoned its decision in a persuasive manner. Therefore, the recourse fails.

Accordingly it is dismissed. There will be no order as to costs.

Recourse dismissed. No order as to costs.