

1982 December 28

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ARGYROS MICHAEL,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION AND ANOTHER,  
*Respondents.*

(Case No. 113/78).

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*Public Officers—Appointments and promotions—Judicial control—  
Principles applicable—Reasonably open to the respondent Com-  
mission, on the material before it to appoint the interested party  
instead of the applicant.*

5           The applicant was a candidate for the post of Registrar in  
the Hotel and Catering Institute. The respondent Public Service  
Commission after considering the merits, qualifications and  
experience of the candidates interviewed as well as their perform-  
10           ance during the interview decided to appoint the interested party  
to the above post and hence this recourse.

15           *Held*, that the Public Service Commission in effecting appoint-  
ments or promotions has a discretion and when it has exercised  
its discretion in reaching a decision, after paying due regard  
to all relevant considerations, and when taking into account  
15           all relevant factors, this Court will not interfere with such a  
discretion unless it can be shown to the satisfaction of the Court  
that such exercise has been made in disregard of any provision  
of the Constitution or of any law or has been made in excess  
or abuse of powers vested in the Public Service Commission;  
20           (see *Saruhan v. The Republic*, 2 R.S.C.C. 133 at page 136);  
that in this case, taking into account the material before the  
respondent Commission, it was reasonably open to it to take  
the sub judice decision complained of; that the reasons which

led the respondent Commission to prefer the interested party are adequately stated in its minutes; that they were reasons pertaining to the academic qualifications of the interested party and her performance at the interview; that the applicant failed to satisfy this Court that he was the best candidate or that the Public Service Commission in reaching the decision complained of has exercised its discretion without paying due regard to all relevant considerations and that it took into account irrelevant factors or that it acted in abuse of the powers vested in it: 5

*Application dismissed.* 10

Cases referred to:

*Theodossiou v. Republic*, 2 R.S.C.C. 44 at p. 47;

*Saruhan v. The Republic*, 2 R.S.C.C. 133 at p. 136.

**Recourse.** 15

Recourse against the decision of the respondent to appoint the interested party to the post of Registrar in the Hotel and Catering Institute in preference and instead of the applicant,

*M. Christofides*, for the applicant.

*Cl. Antoniadis*, Senior Counsel of the Republic, for the respondent. 20

*Cur. adv. vult.*

MALACHTOS J. read the following judgment. The applicant in this recourse claims -

(a) A declaration of the court that the act and/or decision of the respondents, which was published in the Official Gazette of the Republic on 30/12/77 and by which the interested party Christina Rodosthenous was appointed to the post of Registrar in the Hotel and Catering Institute instead of the applicant, is null and void and of no legal effect whatsoever; and 25 30

(b) A declaration of the court that the refusal and/or omission of the respondents to appoint the applicant on the 30/12/77 when the official appointment to the post of Registrar in the Hotel and Catering Institute was published in the Official Gazette of the Republic, is null and void and of no legal effect 35

whatsoever and everything which was omitted should be performed.

The following are the relevant facts of this application.

The Director-General of the Ministry of Labour and Social Insurance by his letter dated 17.6.77 informed the Chairman of the Public Service Commission that the Council of Ministers approved, inter alia, the filling of one vacancy in the post of Registrar in the Hotel and Catering Institute and requested him to take the necessary steps for its filling.

According to the relevant scheme of service the post of Registrar in the Hotel and Catering Institute is a first entry and promotion post and the duties and responsibilities, as well as the required qualifications, are the following:

*Duties and Responsibilities:*

1. Responsible to the Director for:
  - (a) the performance of the administrative and/or clerical work in connection with the subjects of personnel and the needs of the Institute;
  - (b) the keeping, with the cooperation of the teaching and other personnel, of the necessary elements and the carrying out of the involved administrative and/or clerical work relating to the admission, attendance, discipline, promotion and graduation of the students as well as the keeping of full contemporary registers;
  - (c) the implementation of the decisions and arrangements with regard to the development and extension of the activities of the Institute;
  - (d) the keeping of close contact with the Students Union and the handling of welfare problems of the students.
2. To perform any other duties that may be assigned to him.

*Required Qualifications:*

- (a) A University degree or diploma in an appropriate subject, e.g. Public Administration, Business Administration, Law (including Barrister-at-Law), Economics etc.

- (b) Very good knowledge of English and Greek and/or Turkish.
- (c) Integrity of character, initiative, sound judgment, organising and administrative ability.
- (d) Experience relevant to the duties of the post and/or knowledge of proceedings in government service will be considered as an additional qualification. 5

The Public Service Commission at its meeting of 16.7.77 decided that the vacancy in question be advertised allowing two weeks for the submission of applications. The relevant advertisements were published in the Official Gazette of the Republic of 22.7.77 under Notification No. 1384 and in response to it eleven applications, including that of the applicant and the interested party, were submitted. It should be noted here that the applicant was at the time in the Government Service whereas the interested party was an outsider to the Public Service. 10 15

At its meeting of 13.9.77 the Commission decided that eight candidates, including the applicant and the interested party, be invited for interview on 26.9.77 and that the Director-General of the Ministry of Labour and Social Insurance, as well as the Director of the Hotel and Catering Institute should be requested to be present. 20

At its meeting of 26.9.77 and in the presence of the representatives of the Ministry, the Commission interviewed seven candidates, including the applicant and the interested party. 25

The relevant minutes of this meeting read as follows:

“The Commission as well as the Representatives of the Ministry of Labour and Social Insurance put several questions to all the candidates on matters of general knowledge and on matters connected with the duties of the post as shown in the relevant scheme of service. 30

The Commission considered the merits, qualifications and experience of the candidates interviewed as well as their performance during the interview (personality, alertness of mind, general intelligence and the correctness of answers to questions put to them, etc.). 35

The Personal Files and the Annual Confidential Reports of the candidates already in the service were also taken into consideration.

5 The Commission observed that, during the interview, Miss Christina Rodosthenous gave very satisfactory replies to questions put to her and generally she proved to be the best candidate for appointment to the above post.

10 According to the relevant scheme of service, candidates for appointment to the post of Registrar must possess 'a good knowledge of English and Greek'. In order that the Commission might determine the candidates' knowledge of these two languages, in accordance with the relevant scheme of service, a good number of the questions put to the candidates, during the interview were in Greek as well as in English. From the replies to questions put to Miss Christina Rodosthenous, the Commission was satisfied that the officer in question did possess 'a very good knowledge of English and Greek'.

20 After considering all the above and after taking into consideration all the facts appertaining to each one of the candidates and after giving proper weight to the merits, qualifications, abilities and experience of these candidates, as well as to their suitability for appointment to the above post as shown at the interview, the Commission came to the conclusion that Miss Christina Rodosthenous was on the whole the best. The Commission accordingly decided that Miss Christina Rodosthenous be appointed to the temporary (Dev.) post of Registrar, in the Hotel and Catering Institute, w.e.f. 15.11.77."

30 As it appears from his personal file, exhibit 9, and the comparative table, exhibit 7, the applicant was first appointed on 1.9.61 as a Registrar 4th grade to the Ministry of Education and on 1.7.74 was promoted to Registrar 3rd grade. His qualifications are:-

- 35 (i) Pancyprian Gymnasium 1955-1961  
(ii) General Orders 1969  
(iii) Financial Instructions 1970; and  
(iv) Diploma in Law University of Salonika 14.11.75.

The qualifications of the interested party are the following:

- (i) Gymnasium for Girls, ' Limassol 1963-1969
- (ii) Alliance Francaise exams
- (iii) Modern Greek G.C.E. "O" level
- (iv) Bachelor of Arts, Public Administration, American University of Beirut. 5
- (v) Teaching Diploma.

The grounds of law on which the present application is based, as argued by counsel for applicant, may be summarised as follows: 10

- (a) the respondent Commission failed in its primary duty to select the applicant who was the best candidate; and
- (b) the reasons given by the respondent committee for reaching the decision complained of are insufficient and/or vague.

Counsel for applicant submitted that although as regards qualifications under (a) and (b) of the scheme of service, both the applicant and the interested party possessed them in a more or less equal degree this, however, cannot be said for the qualifications under (c) and (d). As regards (c) in the case of the applicant we have a person whose integrity and character, initiative, sound judgment as well as the organising and administrative abilities have been tested and proved according to his confidential reports, as very good. This is not the same in the case of the interested party for whom no elements are available being an outsider to the public service. 15  
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As regards (d) in the case of the applicant, who was already serving in a similar post we have an experienced person in relevant duties of the post in question which is also considered as an additional qualification. This again cannot be said in the case of the interested party. Therefore, the applicant was manifestly superior to the interested party. 30

Counsel for applicant further submitted that there is nothing in the minutes of the respondent Commission to indicate that the experience of the applicant in similar duties which was considered according to the scheme of service an additional quali- 35

fiction, was taken into account. Had the Commission spotted it out they ought to give a specific reasoning as to why they preferred the interested party instead of the applicant. Finally, he submitted that this is a case of insufficient or vague reasoning and since the court is deprived of having control over the decision complained of, this decision should be declared null and void.

It is well settled that the paramount duty of the Public Service Commission in effecting appointments or promotions is to select the candidate most suitable in all the circumstances of each particular case for the post in question. In doing so, the Public Service Commission should decide who is the most suitable among the qualified candidates on the totality of the circumstances pertaining to each one of them. (*Theodossiou v. The Republic*, 2 R.S.C.C. 44 at page 47).

It is also well established that the Public Service Commission in effecting appointments or promotions has a discretion and when it has exercised its discretion in reaching a decision, after paying due regard to all relevant considerations, and when taking into account all relevant factors, this court will not interfere with such a discretion unless it can be shown to the satisfaction of the court that such exercise has been made in disregard of any provision of the Constitution or of any law or has been made in excess or abuse of powers vested in the Public Service Commission. (*Saruhan v. The Republic*, 2 R.S.C.C. 133 at page 136).

In the present case taking into account the material before the respondent Commission I came to the conclusion that it was reasonably open to it to take the sub judice decision complained of. The reasons which led the respondent Commission to prefer the interested party are adequately stated in its minutes quoted hereinbefore. They were reasons pertaining to the academic qualifications of the interested party and her performance at the interview and, as I have already said, it was reasonably open to the Public Service Commission to select her for appointment instead of the applicant. The applicant failed to satisfy me that he was the best candidate or that the Public Service Commission in reaching the decision complained of has exercised its discretion without paying due regard to all

relevant considerations and that it took into account irrelevant factors or that it acted in abuse of the powers vested in it.

As regards the allegation that the reasons given by the Public Service Commission in reaching its decision are insufficient or vague it cannot stand. As I have already said these reasons adequately appear in its minutes. 5

For the reasons stated above, this recourse fails and is dismissed accordingly.

On the question of costs I make no order.

*Recourse dismissed. No order as to costs.* 10