

1982 October 21

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IORDANIS K. TORNARIS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE
EDUCATIONAL SERVICE COMMITTEE AND/OR
THE MINISTER OF EDUCATION,

Respondents.

(Case No. 1/81).

Public (or Educational) Officers—Promotions—Seniority—One of the factors to be taken into account—It may be the decisive factor if all other things are equal—When all factors are equal clear reasons should be given for disregarding seniority—No reasons given for disregarding applicant's seniority—Sub judice promotion annulled—Karageorghis v. Republic (1982) 3 C.L.R. 435 adopted.

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10 This recourse was directed against the decision of the respondent Educational Service Committee to promote to the post of General Inspector of Elementary Education (a promotion post) the interested parties in preference and instead of the applicant. It was not in dispute that applicant was senior to both interested parties.

15 *Held*, that when all other factors are equal clear and cogent reasons should be given by the appointing organ for disregarding the factor of seniority; that looking at the relevant minutes of the respondent Commission there are no reasons at all why applicant's seniority was disregarded; that, therefore, all other things being more or less equal, applicant's seniority ought to prevail; that applicant has, therefore, discharged the onus

Editor's note: The sub judice decision in this recourse was, also, the subject-matter of the recourse in the case of *Karageorghis v. Republic* (1982) 3 C.L.R. 435 the reasoning of which has been adopted in this Case.

of satisfying this Court that he was an eligible candidate who was strikingly superior to the ones selected and the respondent has thus, exceeded the outer limits of its discretion, and, has acted in abuse of its powers; that, moreover, it has not exercised its discretion in a valid manner through failure to take in its exercise into account all material considerations, namely the consideration of seniority; accordingly the sub judice decision must be annulled (reasoning in *Karageorghis v. Republic* (1982) 3 C.L.R. 435 adopted and applied). 5

Sub judice decision annulled. 10

Cases referred to:

Ioannides v. Republic (1979) 3 C.L.R. 328 at p. 338;

Michael v. Republic (1971) 3 C.L.R. 405;

Karageorghis v. Republic (1982) 3 C.L.R. 435.

Recourse. 15

Recourse against the decision of the respondents whereby the interested parties were promoted to the post of General Inspector of Elementary Schools in preference and instead of the applicant.

E. Efstathiou, for the applicant. 20

G. Constantinou (Miss), Counsel of the Republic, for the respondent.

A.S. Angelides, for interested party *G. Papaleontiou*.

Ch. Panayides, for interested party *A. Papadopoulos*.

Cur. adv. vult. 25

HADJIANASTASSIOU J. read the following judgment. In the present proceedings Iordanis K. Tornaris, the applicant, seeks a declaration of the Court that the decision of the respondents which has been published in the Official Gazette of the Republic on 7th November, 1980, under No. 2009 by which the respondents promoted to the post of General Inspector of Elementary Education the interested parties George Papaleontiou and Antonios Papadopoulos in preference and instead of the applicant is null and void and of no effect whatsoever. 30

THE FACTS 35

The applicant was appointed as a teacher in the Elementary Education since 1947 and he was promoted at first to the post

of Headmaster B' in 1957 and in 1959 to the post of Headmaster A'. In 1960 he was further promoted to the post of Inspector of Elementary Education, a post which he holds until today being the most senior Inspector in Cyprus. In addition the
5 applicant was given a scholarship in the Saltley College of the University of Birmingham and had obtained a diploma in Pedagogy. In 1969-70 he attended the University of Oxford and obtained a diploma in educational administration. In 1978
10 he obtained from the State University of New York the Master of Science in educational administration with an additional honorary distinction because of his excellent proficiency. The applicant has served education in a number of other posts and in August, 1980, when the post of General Inspector of Elementary Education has been published he appeared together
15 with a number of other candidates before the Commission and in addition to his qualifications and his diplomas he was the most senior from all the other candidates.

In February, 1981, the interested party G. Papaleontiou opposed the application of the applicant, but for reasons which
20 are not necessary to be given his application was not tried at the same time with the case of *Andreas Karageorghis v. The Republic* and it is now known that the Court in the case quoted, which was delivered on 5th May, 1982,* annulled the appointment of interested party G. Papaleontiou and no appeal was
25 made.

Turning now to the opposition counsel for the respondent argued that the decision attacked was correct and legal and was made within the discretionary powers of the Committee under Law 10/69. In addition counsel in her opposition, having given
30 a number of reasons, finally added that the Committee in promoting A. Papadopoulos relied on his merit, qualifications, experience and the annual confidential reports, as well as, on the opinion of the Head of the Department Mr. N. Papaxenophontos and reached the conclusion that the aforesaid interested
35 party was the most suitable for promotion.

In addition Mr. Arestis, counsel for the interested party A. Papadopoulos in his written address argued that the Committee has taken into consideration the whole career of the interested party during his service. Indeed, he added, one going

* Reported in (1982) 3 C.L.R. 435.

through and comparing the one with the other, it is clear that the interested party had more administrative ability and administrative qualifications than the applicant. As regards the allegation of the applicant that he had more qualifications as compared to the interested party, counsel further added that it is entirely incorrect because the interested party is a holder of P.H.D. of the University of Minnesota since 1974, whilst the applicant has an M.A. in Educational Administration which he received recently. Finally, counsel concluded that the stand of the applicant that he had more than nine years seniority over the interested party and that the applicant ought to have been preferred in reality, he added, the applicant is more senior to the interested party by six years and ten months only, because the applicant had become Inspector of General Lessons of Elementary Education on 1st September, 1962, and the interested party was promoted in the same post on 1st February, 1969. In support of his argument he said that in the light of the authorities the seniority should not play a big role and relied on the case of *Andreas Ioannides v. The Republic of Cyprus* (1979) 3 C.L.R. 328 at p. 338 and *Andreas Michael v. The Republic of Cyprus* (1971) 3 C.L.R. 405.

Mr. Efstathiou counsel on behalf of the applicant in support of his written address argued that the applicant is most superior in merit to the interested party G. Papaleontiou who did not have a confidential report by which he should be rated from the year 1973. Indeed, he argued that the interested party cannot claim that he is superior to the applicant because there was not yardstick of comparison in the present case. In addition counsel added that as regards the second interested party one would observe that from the comparison of the confidential reports of A. Papadopoulos with those of the applicant it becomes clear that the applicant is more superior in merit. Furthermore, counsel said that if one goes through the confidential reports the applicant is rated as being excellent regarding his administrative ability and his administrative qualifications in the aspect of human relations; and in his personality, as well as, his ability for work, and on the contrary, the interested party has been rated as very good. Finally, counsel argued that the seniority of the applicant should weigh more for his promotion, because Mr. Papaxenophontos clearly said: "As far as seniority is concerned, I wish to point out the importance

of this criterion in this particular case seeing that we have before us candidates who have passed various stages of selection, and they have spent themselves in the service of education. As far as qualifications are concerned, I wish to stress that the first priority is not so much the academic qualifications of the candidates but the special qualifications that should be compatible with this particular post and the relevant duties. What is needed is educational qualifications, knowledge of modern pedagogic concepts and methods, as also by the schemes of service”.

I have considered very carefully the arguments of all counsel and because as I have said earlier I have issued my judgment in *Andreas Karageorghis v The Republic through the Committee of Educational Service* in which I have dealt at length with the very same submission I have reached the conclusion to adopt and apply in the present case the principles and the findings which appear in that judgment. Indeed, dealing with the effect of seniority I can do no better than to turn once again to my judgment in which I had this to say at pp 455-458:

“It has been authoritatively settled by the case law of this Court that seniority is one of the factors to be taken into account in effecting a promotion and it may be the decisive one if all other things are equal. (See inter alia *Lardis v. The Republic*, (1967) 3 C.L.R. 64 at p. 77; *Vonditsianos v. The Republic*, (1969) 3 C.L.R. 83; *Thalassinos v. The Republic*, (1973) 3 C.L.R. 386).

In *Partellides v. The Republic*, (1969) 3 C.L.R. 480 (C.A.), where applicant’s seniority over interested party was just under two years, in annulling the sub judice promotion, the Court of Appeal is reported to have said:

‘In the circumstances we are of the opinion that it was not reasonably open to the Respondent Commission to promote Interested Party Gregoriades instead of the Appellant. All other things being more or less equal the Appellant’s seniority ought to prevail. It follows that the relevant discretionary powers of the Respondent were exercised in an erroneous manner’.

In *Vonditsianos* case (supra) (affirmed on appeal) see p. 445 of the same report, Triantafyllides, J. (as he then was) said:

‘On the whole of the material before the Court, and in the absence of any due reasons to the contrary—which I would expect to find duly recorded in the relevant minutes of the Respondent—I fail to see how it was open to the Respondent, in the proper exercise of its discretionary powers, to prefer Interested Party Vovides to Applicant Constantinou, in spite of the greater seniority and experience of the latter over the former, and there being no difference in merit in favour of the Interested Party’.

In *Bagdades v. The Central Bank*, (1973) 3 C.L.R. 417, where applicant’s 6 years seniority over the interested party was disregarded without cogent reasons, I said at pp. 426 and 428:

‘It has been said judicially in a number of cases that the paramount duty of a collective organ in effecting appointments and promotions is to be the selection of the most suitable candidate for the particular post having regard to the totality of circumstances pertaining to each one of the qualified candidates, according to the needs of the scheme of service; (*Georghiades v. The Republic* (1967) 3 C.L.R. 653), including length of service which though always a factor to be considered, is not always the exclusive vital criterion for such appointment or promotion. In their search to select the best candidate for a post a collective organ should carefully consider the merits and qualifications of each candidate, and length of service is one of the factors to be taken into account. At the same time it has been stressed that though it is not always the exclusive vital criterion, cogent reasons for disregarding substantially greater seniority of a candidate should be given by that body....

In the light of all the material before me, and in the circumstances of this case, and in view of the fact that the applicant has served efficiently and most satisfactorily the bank for a number of years, I find myself unable to follow or understand the reason why the interested party was preferred. However, in the absence of any cogent reasons given in the minutes regarding what were actually the results of the interviews (whether a record was kept and the system of marking was adopted) as well as what were the other relevant factors which the Committee

said they took into consideration, and the reason why they disregarded the greater seniority of the applicant, I have reached the view that the respondents had exercised their discretionary powers in a defective manner because
5 it was not reasonably open to them to reach such a conclusion'.

In *Zafirides v. The Republic*, (1980) 3 C.L.R. 140, where applicant's 13 years seniority over the interested party was disregarded, A. Loizou, J. in annulling the sub judice promotion
10 said at pp. 147-148:

'In the present case the applicant has, as compared with the interested party about 13 years of seniority and 15 years of longer service. In spite of this substantial seniority and greater experience the respondent Commission preferred the interested party. It is true that in its minutes
15 it is stated that during the interview the interested party proved to be, together with Antigoni Petridou the best candidates for appointment or promotion to the post in question. Also the representatives of the Department
20 are recorded to have stated that the services of the said two officers had been very satisfactory and that they considered them very suitable for the post, but there is nothing in that opinion to suggest clearly a comparison with, or if that amounted to a preference as against, the other
25 candidates. In other words it is not clear if that is a recommendation of the said two officers implying that the other candidates, and at that the applicant in particular was not suitable or was not recommended for the post. The description of a candidate as suitable for a particular post
30 cannot by itself be equated to a recommendation of that officer for appointment or promotion to a post in preference to others or that the suitability of one implies the unsuitability of other candidates.

In my view the seniority of the applicant is so substantial
35 that in the circumstances of this case more cogent reasons were called for in disregarding same, as in that way an administrative Court would have been enabled to ascertain whether the administrative discretion of the appropriate organ was properly exercised and so become capable of judicial control in the sense of Article 146 of the Constitution'.
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In *Antonioni v. The Republic*, (1975) 3 C.L.R. 510 (C.A.), the following were stated at p. 515:

‘We should say that we have felt some anxiety because of the fact that the most senior candidate was not selected for appointment even though he was not described as an ‘average officer’; one does not have to be ‘exceptional’ in order to enjoy the benefit of the advantage of seniority’.

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From the above case law there emerges clearly the principle that when all other factors are equal clear and cogent reasons should be given by the appointing organ for disregarding the factor of seniority.

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Looking at the relevant minutes of the respondent commission, I find no reasons at all why applicant’s seniority was disregarded. I am, therefore, bound to hold that, all other things being more or less equal, applicant’s seniority ought to prevail. Applicant has, therefore, discharged the onus of satisfying me that he was an eligible candidate who was strikingly superior to the one selected and the respondent has thus, exceeded the outer limits of the discretion, and, therefore, has acted in abuse of its powers. Moreover, I am bound to hold that the respondent Commission has not exercised its discretion in a valid manner through failure to take in its exercise into account all material considerations, namely the consideration of seniority’.

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For the reasons I have given this recourse succeeds, but in these circumstances I am not making an order for costs.

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Sub judice decision annulled. No order as to costs.