

1982 March 6

[A Loizou, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

YIANNAKIS K. PAPHITIS,

Applicant,

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THE ELECTRICITY AUTHORITY OF CYPRUS,

Respondent.

(Case No. 419/79).

Public Officers—Schemes of service—Appointments and promotions contrary to—Invalid—Appointing organ bound by a scheme of service—And not open to it to ignore any of the qualifications required by a scheme of service on the ground that they are not of significance or that they are not essential.

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The applicant and the interested party were candidates for promotion to the vacant post of Foreman II/I in the Electricity Authority of Cyprus. Amongst the qualifications required by the relevant scheme of service was possession of a driving licence under the law for motor vehicles, Class "A". The respondent decided to promote the interested party to the above post though he did not possess the aforesaid qualification. The applicant challenged this decision by means of this recourse mainly on the ground that the interested party did not possess one of the required qualification, namely, a valid driving licence. Counsel for the respondent argued that the non-possession of the driving licence could not affect the validity of the sub judice decision because the said qualification could be described as formal and unimportant given that within the duties and responsibilities of the post, as set out in the scheme of service, no mention is made that the holder of the post will offer services as driver or will perform other similar work.

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Held, that an appointment or promotion made contrary to the relevant scheme of service is invalid; that it is not open to

an administrative organ entrusted with appointments and promotions to ignore any of the required qualifications on the ground that they are not of significance as such or they are not essential because no duties and responsibilities connected with such qualification are included in those required to be performed by the holder of a post under the relevant scheme of service; that such an organ is bound by the relevant scheme of service, the making and amending of which being vested with that organ entrusted with their preparation; accordingly the recourse should succeed and the sub judice decision must be annulled.

Sub judice decision annulled.

Cases referred to:

- Papapetrou v. Republic*, 2 R.S.C.C. 61;
Ishin v. Republic, 2 R.S.C.C. 16;
 15 *Constantinidou and Others v. Republic* (1974) 3 C.L.R. 416;
PA.SY.DY. and Others v. Republic (1978) 3 C.L.R. 27;
Police v. Hondrou and Another, 3 R.S.C.C. 82;
Bellapaishiotis v. Republic (1967) 3 C.L.R. 420;
HadjiGeorghiou v. Republic (1977) 3 C.L.R. 35.

20 **Recourse.**

Recourse against the decision of the respondent to appoint and/or promote and/or second the interested party to the permanent and/or temporary post of Foreman II/I in preference and instead of the applicant.

- 25 *E. Efstathiou* with *C. Loizou*, for the applicant.
G. Cacoyannis, for the respondent.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks a declaration that the decision of the respondent Authority dated the 18th September, 1979, by which Charalambos Kyriacou (hereinafter referred to as the interested party) was appointed and/or promoted and/or seconded to the permanent and/or temporary post of Foreman II/I (Construction and Maintenance Overhead Lines) instead of himself is null and/or illegal and/or devoid of any legal effect.

The facts of the case are as follows:

The applicant was first engaged by the respondent Authority

as a temporary worker on the 5th July, 1956, and regraded to Linesman Grade III on the 15th August, 1960. On the 1st July, 1971, he was put on a monthly salary basis and three years later he was regraded to the post of a Chargehand and reached the top of his grade on the 1st July, 1975.

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The interested party was first engaged by the respondent Authority on the 26th November, 1956, as a labourer and was appointed a regular employee with effect from 26th May, 1957.

On the 1st July, 1965, he was promoted to the post of Linesman/Service and Meter Installer and as from the 1st July, 1979, the interested party was regraded to the post of a Chargehand.

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A vacant post of Foreman II/1 (Construction and Maintenance Overhead Lines) in the Paphos District Office was published on the 24th May, 1979, in Staff Vacancy Notice No. 8/79. The scheme of service has been produced as exhibit 3 and with regard to the required qualifications one of them, Item No. 9, is the possession of a driving licence under the law for motor vehicles, Class 'D'.

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The applicant and the interested party were candidates for promotion to the aforesaid vacant post.

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The Joint Advisory Committee for Promotions and Regradings in their report dated 10.8.1979, unanimously recommended the interested party and another candidate—not the applicant—as the two best candidates for the said vacant post. The respondent Authority acting on the said report and on the recommendations of the Standing Sub-Committee on Staff Matters as per their Minute 3874 (exhibit 'B') and after taking into account all relevant considerations at its meeting of the 26th September, 1979, decided to promote the interested party to the said post with effect from 1.9.1979. The full text of the said decision is to be found in their relevant minute (exhibit 'C').

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The applicant challenges the said decision on a number of grounds, one of them being that the interested party did not possess one of the required qualifications, namely, that of a valid in law driving licence for motor vehicles, Class 'D'.

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Counsel for the respondent Authority whilst conceding that

the interested party did not possess such a driving licence, as mentioned in the scheme of service, argued that same could not affect the validity of the sub judice decision inasmuch as the said qualification could be described as formal and unimportant given that within the duties and responsibilities of the post, as set out in the said scheme, no mention is made that the holder of the post will offer services as a driver or will perform other similar work.

10 In the case of *Theodoros Papapetrou v. The Republic*, 2 R.S.C.C. p. 61, it was held that the Executive power in relation to the making and amending of schemes of service in respect of posts in the Public Service of the Republic is vested in the Council of Ministers and not in the Public Service Commission and that the Public Service Commission is bound by the relevant schemes of service relating to the post in question. This was reiterated in the case of *Ilter Ishin v. The Republic*, 2 R.S.C.C., p. 16, and consistently followed by this Court since then in the exercise of its revisional jurisdiction under Article 146.1 of the Constitution.

20 In the case of *Mary Constantinidou & Others v. The Republic* (1974) 3 C.L.R., p. 416, it was held that an applicant who did not possess one of the required qualifications under a scheme of service, had no legitimate interest and therefore is not entitled to file a recourse under Article 146 of the Constitution. In *Pankyrios Syntechnia Dimosion Ypallilon & Others v. The Republic* (1978) 3 C.L.R., p. 27, it was held that a scheme of service made by the Council of Ministers under section 29 of the Public Service Law is delegated legislation in the sense expounded in the case of *Police v. Hondrou & Another*, 3 R.S. C.C., 82.

Reference may also be made to the case of *Bellapaishiotis v. The Republic* (1967) 3 C.L.R., p. 420, where at page 427 it was stated that an appointment or promotion made contrary to the relevant scheme of service is invalid, as well as to the case of *Evangelos Hadjigeorgiou v. The Republic* (1977) 3 C.L.R., p. 35, which together with the *Bellapaishiotis* (supra) has been invoked by learned counsel for the respondent Authority as supporting his aforesaid submission. I am afraid that is not the case. In the latter case the issue was whether the interested party possessed the qualification of a good general education

of a standard not below that of a leaving certificate of a Secondary School because of his educational background and not that he did not qualify at all for promotion under the schemes of service because the Secondary Education School he had attended was a four-year and not a six-year Secondary Education School. In the *Bellapaishiotis* case the interested party was found to possess all the required qualifications under the relevant scheme. 5

On the aforesaid authorities, I have come to the conclusion that it is not open to an administrative organ entrusted with appointments and promotions to ignore any of the required qualifications on the ground that they are not of significance as such or they are not essential because no duties and responsibilities connected with such qualification are included in those required to be performed by the holder of a post under the relevant scheme of service. In my view such an organ is bound by the relevant scheme of service, the making and amending of which being vested with that organ entrusted with their preparation. 10 15

For all the above reasons this recourse succeeds and the sub judice decision is annulled but in the circumstances I make no order as to costs. 20

In view of this outcome, I consider it unnecessary to deal with the other grounds relied upon on behalf of the applicant.

Sub judice decision annulled. No order as to costs. 25