

1982 May 15

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ALEXANDROS LARKOS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 369/81).

*Public Officers—Promotions—Meteorological Officer “A”—Merit
—Applicant and interested parties of equal merit—Seniority
—Applicant and one of the interested parties of equal seniority
and three of the interested parties senior to applicant—Qualifi-
cations—All candidates possessing all qualifications required
by relevant scheme of service but applicant possessing additional
or superior qualifications—Such additional qualifications do not
necessarily put the holder in an advantageous position vis-a-vis
other candidates—Recommendation of Head of Department a
very good reason for not preferring a candidate in spite of his
additional qualifications—It is for the Public Service Commission
to interpret and apply the schemes of service and, so long as
the interpretation adopted is one reasonably open to them, the
Court will not interfere—Overriding duty of the Commission
being the selection of the most suitable candidate for promotion—
And the recommendations of the Head of Department carry consi-
derable weight—Public Service Commission in this case discharged
their duties scrupulously and meticulously and paid heed to every
material consideration including views of Head of Department—
And neither exceeded nor abused their powers.*

The applicant, an officer in the Department of Meteorology of the Ministry of Agriculture was a candidate for promotion to the post of Meteorological Officer “A”. The respondent Public Service Commission after hearing the views of the Head

of Department and after making an evaluation of the merits, qualifications and seniority of the candidates, as they emerged from their personal files they selected for promotion the four interested parties in preference and instead of the applicant. Hence this recourse. 5

Applicant and interested parties were approximately of equal merit as it emerged from their confidential reports. At least three of the interested parties were senior to the applicant and the fourth had equal seniority to him. All the candidates possessed the qualifications required by the relevant scheme of service. 10

Counsel for the applicant mainly contended:

- (a) That the respondents acted under a misconception with regard to the seniority of the applicant in the service arising from inaccurate information allegedly contained in a table detailing the posts held by the candidate. 15
- (b) That the Commission failed to pay due heed to the superior academic qualifications of the applicant in that the Head of Department in evaluating the qualifications of the candidates failed to direct them properly as to the superior academic qualifications of the applicant, in particular his Master's Degree in Meteorology. 20

Held, (1) that there is nothing whatever to suggest that the inaccuracy, if any, as to the length of service of the parties in the table in question misled the Commission in any way as to the seniority of the candidates; that the facts relevant to their seniority, including the renaming of the post of Assistant Meteorological Officer in 1980, were accurately recorded in the files of the parties that formed the basic material, for the evaluation of the suitability of the candidates for promotion; and that, consequently, the submission that the Public Service Commission took its decision while labouring under a misconception as to the seniority of the parties must be rejected. 25 30

(2) That the possession of a qualification additional to those expressly required by the scheme of service does not necessarily put the holder in an advantageous position vis-a-vis other candidates though it is a fact that should be duly evaluated in the context of the totality of the qualifications of the parties, but 35

not a factor to be singled out for separate and distinct consideration; that the recommendation of the Head of Department is a very good reason for not preferring a candidate in spite of his post-graduate qualifications; that it is for the Public Service Commission to interpret and apply the schemes of service and, so long as the interpretation adopted was one reasonably open to them the Court will not interfere with the construction they place thereon; that the overriding duty of the Commission in each and every case is to select the candidate most suitable for promotion and the recommendations of the Head of Department carry considerable weight; that the Public Service Commission discharged their duties scrupulously and meticulously and paid heed to every relevant consideration, including the balanced views of the Head of Department and they have neither exceeded nor abused their powers; accordingly the recourse should fail. (*Haviaras v. Republic* (1981) 3 C.L.R. 492 distinguished).

Application dismissed.

Cases referred to:

- 20 *Cleanthous v. Republic* (1978) 3 C.L.R. 320 at pp. 327, 328;
Skarparis v. Republic (1978) 3 C.L.R. 106 at p. 116;
Andreou v. Republic (1979) 3 C.L.R. 379;
Georgiades and Others v. Republic (1967) 3 C.L.R. 653 at p. 668;
- 25 *Tryphon v. Republic* (1968) 3 C.L.R. 28 at p. 40;
Kyriacou and Others v. Republic (1975) 3 C.L.R. 37 at pp. 44, 45;
Haviaras v. Republic (1981) 3 C.L.R. 492.

Recourse.

30 Recourse against the decision of the respondent to promote the interested parties to the post of Meteorological Officer "A" in preference and instead of the applicant.

G. Triantafyllides, for the applicant.

A. Vladimirov, for the respondent.

Cur. adv. vult.

35 ΠΙΚΙΣ J. read the following judgment. Alexandros Larkos, an officer in the department of Meteorology of the Ministry of Agriculture, was a candidate for promotion to the post of Meteorological Officer "A". He was one of seven candidates

short-listed by a departmental committee as eligible and suitable for promotion. There were four vacancies to be filled.

A meeting of the Public Service Commission was held on 25th August, 1981, to consider the merits of the candidates and make their selection. After hearing the views of Mr. Philaniotis, the head of the Meteorological Section of the Ministry, and after making an evaluation of the merits, qualifications and seniority of the candidates, as they emerged from the personal files of the contestants, they chose and promoted the four interested parties, namely, Loizos HjiIoannou, Kyriacos Theophilou, Loizos Stephanou and Eleni Eliadou (Miss).

The applicant challenges the validity of the decision to appoint the interested parties, each and everyone of them, in preference to him and a declaration is sought that the decision to appoint the interested parties and the omission to appoint him is null and void. The grounds allegedly invalidating the decision are not mentioned in the prayer but emerge from the legal grounds set out in support of the application appearing in a schedule accompanying the recourse. They are, in short, that respondents acted in abuse and excess of their powers, firstly, by ignoring or disregarding the striking superiority of the applicant compared to the interested parties and, secondly, by failing to carry out a proper inquiry into the suitability of the candidates competing for promotion.

The complaints of the applicant finally pressed in the address of counsel are rather different from those adumbrated in the recourse. Obviously on examination of the documentary material available to the Commission, the claim to striking superiority was abandoned rightly, for it cannot be supported on any view of the facts. In the admission of applicant made in the final address the parties had approximately equal merits, as it emerges from examination of their confidential reports. Moreover, at least three of the interested parties, namely, Mr. HjiIoannou, Mr. Theophilou and Mr. Stephanou, were senior to the applicant from the view-point of length of service, whereas the fourth, Miss Eliadou, had, on a view of the facts most favourable to the applicant, equal seniority to him. The position finally crystallizing is quite different from that portrayed in the application. In the end the applicant was constrained to rely on two specific grounds turning on the propriety of the inquiry

and accuracy of the perception of the facts allegedly invalidating the decision.

5 The first ground is that the respondents acted under a misconception with regard to the seniority of the applicant in the service arising from inaccurate information allegedly contained in a table detailing the posts held by candidates for promotion. (Table 3 "A" to the opposition). It is the allegation of applicant that this table inaccurately records that the applicant and the interested parties were promoted to the post of Meteorological
10 Officer on the dates mentioned therein, whereas what happened in fact is that all of them held the post of Meteorological Officer as from 1980, subsequent to the renaming of the title of the post of Assistant Meteorological Officer to Meteorological Officer in 1980. The change was effected by changing the title
15 of the post; it did not involve any alterations of duties. On the other hand, it is not disputed that the applicant as well as the interested parties held the substantive post of Meteorological Officer on the dates mentioned in Table "A" and their seniority in that regard is in no way misrepresented. If the
20 failure to record that the post of Meteorological Officer was a substitute title for that of Assistant Meteorological Officer amounts to a misrepresentation of facts, it is of very limited significance.

25 It is common ground that three of the interested parties were permanently emplaced in the post of Assistant Meteorological Officer on 1st January, 1977, and that the applicant and interested party, Miss Eliadou, on 1st March, 1979. The table gives on the whole an accurate account of the length of service of the parties and the positions they held in the Department
30 of Meteorology of the Ministry of Agriculture. Not only the three male interested parties were senior to the applicant but arguably Miss Eliadou as well, for she was first appointed in the service, be it on a temporary basis, prior to the applicant.

35 There is nothing whatever to suggest that the inaccuracy, if any, as to the length of service of the parties in Table "A" misled the Commission in any way as to the seniority of the candidates. The facts relevant to their seniority, including the renaming of the post of Assistant Meteorological Officer in 1980, were accurately recorded in the files of the parties

that formed the basic material, as stated in the decision itself, for the evaluation of the suitability of the candidates for promotion. I consequently reject the submission that the Public Service Commission took its decision while labouring under a misconception, not to mention a material misconception, as to the seniority of the parties. I find this ground to be totally devoid of substance. 5

The second complaint, if I comprehended it correctly, is this: that the Commission failed to pay due heed to the superior academic qualifications of the applicant. More specifically the contention is that Mr. Philaniotis in evaluating the qualifications of the candidates misdirected the Commission or rather failed to direct them properly as to the superior academic qualifications of the applicant, in particular his Master's Degree in Meteorology. An examination of the statement made by Mr. Philaniotis before the Commission, as recorded in the minutes of the Commission, immediately reveals that Mr. Philaniotis made no attempt whatever to play down the qualifications of the applicant. All he stated was that all candidates possessed adequate qualifications for the discharge of the duties of the posts then about to be filled. And he was, no doubt, in an ideal position to assess the needs of the post and the expertise required to carry out their duties successfully. That applicant was the holder of a Master's Degree was a fact before the Commission and had it in mind in reaching their decision. 10
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The possession of additional qualifications simpliciter to those required by the relevant scheme of service does not specifically enhance the claims of the holder to promotion. I find myself in agreement with the statement of A. Loizou, J., in *Cleanthous v. The Republic*, (1978) 3 C.L.R. 320, 327, 328, that possession of a qualification additional to those expressly required by the scheme of service does not necessarily put the holder in an advantageous position vis-a-vis other candidates. Certainly it is a fact that should be duly evaluated in the context of the totality of the qualifications of the parties, but not a factor to be singled out for separate and distinct consideration. As Triantafyllides, P., pointed out in *Skarparis v. The Republic*, (1978) 3 C.L.R. 106, 116, the recommendation of the Ministry concerned, in this case the head of the department, is a very good reason for not preferring a candidate in spite of his post-graduate qualifications. 30
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5 It is well settled that it is for the Public Service Commission to interpret and apply the schemes of service and, so long as the interpretation adopted is one reasonably open to them, the Court will not interfere with the construction they place thereon. (See, inter alia, *Andreou v. The Republic*, (1979) 3 C.L.R. 379). The overriding duty of the Commission in each and every case is to select the candidate most suitable for promotion and the recommendations of the departmental head carry considerable weight. (*Georghiades and Others v. The Republic*, (1967) 3 C.L.R. 653, 668; *Tryphon v. The Republic*, 10 (1968) 3 C.L.R. 28, 40; *Kyriacou and Others v. The Republic*, (1975) 3 C.L.R. 37, 44, 45).

15 I have carefully considered every aspect of the case. In my judgment the Public Service Commission went about the discharge of their duties scrupulously and meticulously and paid heed to every relevant consideration, including the balanced views of Mr. Philaniotis. They neither exceeded nor abused their powers. The present case is perfectly distinguishable from that of *Haviaras v. The Republic*, (1981) 3 C.L.R. 492, 20 where promotions in the police service were annulled on the ground that the appointing body acted under a material misconception as to the seniority of the candidates for promotion.

In the result the recourse is dismissed. There will be no order as to costs.

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Application dismissed. No order as to costs.