

1982 September, 4

[A. Loizou, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SAVVAS L. PETRIDES AND ANOTHER,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Cases Nos. 301/79, 321/79).

Public Officers—Appointments and promotions—Qualifications of candidates—Possession of qualifications deemed as additional under relevant scheme of service—Duly inquired into by the Commission—Tourpekki v. Republic (1973) 3 C.L.R. 593 distinguished.

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Public Officers—Appointments and promotions—Head of Department—Description by him of a candidate as suitable for a particular post cannot by itself be equated to a recommendation of that officer for appointment or promotion to a post in preference to others.

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The applicants in these recourses challenged the decision of the respondent Commission to appoint to the temporary post of Assistant Cultural Officer in the Ministry of Education the interested party in preference and instead of themselves.

Counsel for the applicants mainly contended.

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(a) That the respondent Commission failed to carry out the due inquiry regarding the additional qualifications by them as opposed to the interested party (see *Tourpekki v. Republic (1973) 3 C.L.R. 593* at pp. 602–603).

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(b) That undue importance was given to the recommen-

tations* of the representative of the Ministry concerned under whom the interested party was serving before her appointment.

- 5 (c) That the respondent Commission failed in its paramount duty to select the most suitable candidate for the post.

10 *Held*, that it is clear from the material before this Court that the respondent Commission interpreted and applied the relevant Scheme of Service in a proper manner and evaluated correctly the qualifications of the applicants and the interested party along with those of all other candidates, having duly inquired into the matter; that though it is correct that the respondent Commission does not make any particular reference to what under the relevant scheme is considered to be an additional
15 qualification, that applies to all the candidates as none has been credited with it and it does not appear and no mention is made anywhere that the possession of such additional qualification has in any way weighed with them when preferring the interested party as against the other candidates; that, in any event, when
20 the respondent Commission speaks of having considered the qualification of all candidates, must be taken to have considered them as against the totality of the requirements of the Scheme of Service in relation to each of them and his qualifications; that once, therefore, this additional qualification was part of
25 those required under the Scheme of Service, and the respondent Commission stated that it has inquired into them, it cannot be validly argued that the matter was not duly inquired into and considered by the respondent Commission; that there is, on the contrary, nothing to suggest that they omitted to examine
30 same; that, therefore, the case of *Tourpekkki* (supra) is distinguishable as in that case the applicant appeared to possess a qualification which might be considered under the relevant scheme, an additional advantage, which was not possessed by the interested party chosen in her stead and no reasons were
35 given for so ignoring such an advantage.

- (2) That there was nothing in the opinion expressed by the

* The Representative of the Ministry of Education stated before the Commission that the interested party had been working under him for some time, her services had been very satisfactory and that he considered her very suitable for the post of Assistant Cultural Officer.

representative of the Ministry of Education to suggest clearly a comparison with the other candidates; that the description of a candidate as suitable for a particular post 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; accordingly contention (b) should fail. 5

(3) That on the totality of the material before this Court the subject decision was reasonably open to the respondent Commission which has exercised its relevant discretionary powers within the proper limits for the purpose, and in arriving at the subject decision there has been neither a misconception of law nor of fact nor any abuse or excess of power; that, moreover, it was reached after a due and proper inquiry and it is duly reasoned; accordingly contention (c) should, also, fail. 10 15

Applications dismissed.

Cases referred to:

Tourpekki v. Republic (1973) 3 C.L.R. 593 at pp. 602-603;
Christou v. Republic, 4 R.S.C.C. 1;
Zafirides v. Republic (1980) 3 C.L.R. 140 at p. 147; 20
Decision of the Greek Council of State No. 460/65;
Lyonas v. Republic (1975) 3 C.L.R. 536;
Theodossiou v. Republic, 2 R.S.C.C. 44;
Evangelou v. Republic (1965) 3 C.L.R. 292;
Bagdades v. Central Bank of Cyprus (1973) 3 C.L.R. 417. 25

Recourses.

Recourses against the decision of the respondent to appoint the interested party, to the post of Assistant Cultural Officer in the Ministry of Education, in preference and instead of the applicants. 30

A. S. Angelides, for the applicant in Recourse 301/79.
 Applicant in Recourse 321/79 appeared in person.

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

E. Odysseos, for the interested party. 35

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By these two recourses which have been heard together the applicants chal-

lenge the appointment to the temporary post of Assistant Cultural Officer in the Ministry of Education, of Eleni Nikita (hereinafter to be referred to as the "interested party"), as being null and void and of no effect whatsoever.

5 This post, according to the relevant scheme of service, is a first entry post and the qualifications required include a degree or title of a University or Polytechnic or a Higher School of Art; good knowledge of at least one of the prevailing European languages; and postgraduate training abroad and/or
10 study visits abroad, as an additional qualification. The vacancy in question was advertised and 24 applications were made in response thereto.

The respondent Commission, then at its meetings of the 16th December 1978, and 20th January, 1979, decided that nine
15 candidates, including the applicants and the interested party be invited for interview on the 22nd January 1979. The Cultural Officer of the Ministry of Education was present at this meeting as the Director-General of the Ministry was absent abroad.

In the minutes of this meeting of the respondent Commission,
20 (enclosure 7 of the bundle of documents attached to the opposition), it is inter alia stated:

25 "The Commission as well as the Representative of the Ministry of Education 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.

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

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

35 The Commission considered also the merits, qualifications, service and experience of Mrs. Elli Constantinou, who was serving in the temporary (Dev.) post of Assistant

Cultural Officer, as reflected in her Personal File and in her Annual Confidential Reports.

The Representative of the Ministry of Education stated that the services of Mrs. Elli Constantinou, who was serving in the temporary (Dev.) post of Assistant Cultural Officer, had been very satisfactory and that he considered her very suitable for appointment to the corresponding permanent (Ord.) post. 5

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, service and experience of these candidates, as well as to their suitability for appointment to the above post, the Commission came to the conclusion that Mrs. Elli Constantinou, who was serving in the temporary (Dev.) post of Assistant Cultural Officer, was on the whole the best. The Commission accordingly decided that Mrs. Elli Constantinou be appointed, on probation, to the permanent (Ord.) post of Assistant Cultural Officer w.e.f. 1.4.79. 10 15 20

The Commission observed that Mrs. Elli Constantinou was serving in the temporary (Dev.) post of Assistant Cultural Officer as from 1.3.78. In view of the above, and having regard to the Council of Ministers' Decision No. 13.032 of 31.1.74 and also to the provisions of Section 38(1) of Law No. 33/67, the Commission decided that the probationary period in respect of the above officer be reduced and that the officer in question be required to serve on probation until 28.2.80. 25

The Commission then considered the filling of the consequential vacancy in the temporary (Dev.) post of Assistant Cultural Officer, which was created as a result of the appointment of Mrs. Elli Constantinou to the corresponding permanent (Ord.) post. 30

From the candidates interviewed, the Commission observed that Mrs. Eleni S. Nikita gave very satisfactory replies to questions put to her and generally she proved to be the best candidate for appointment to the above post. 35

5 The Representative of the Ministry of Education stated that Mrs. Eleni S. Nikita had been working under him for some time, her services had been very satisfactory and that he considered her very suitable for the post of Assistant Cultural Officer.

10 According to the relevant scheme of service, candidates for appointment to the post of Assistant Cultural Officer must possess 'a good knowledge of one of the prevailing European languages'. The Commission observed that Mrs. Eleni S. Nikita had studied French and was serving as a Secondary School Teacher for the French language as from 1971. In view of the above, the Commission was satisfied that the candidate in question did possess 'a good knowledge of French—i.e. one of the prevailing European languages'.

20 After considering the above and after taking into consideration all the facts appertaining to each one of the candidates interviewed 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 Mrs. Eleni S. Nikita was on the whole the best. The Commission accordingly decided that Mrs. Eleni S. Nikita be appointed to the temporary (Dev.) post of Assistant Cultural Officer w.e.f. 1.4.1979."

25 These recourses are based on the following grounds of law:—

1. The sub judice decision was taken without proper or due inquiry as regards the qualifications of the candidates.
- 30 2. In appointing the interested party, the respondent Commission acted contrary to the general principle of Administrative Law, that the best candidate should be selected and/or acted arbitrarily in misconception of fact as they failed to consider the qualifications and experience of the applicants.
- 35 3. The respondent Commission failed to give sufficient and/or due reasoning for the sub judice decision which is vague and was taken under a misconception of fact.

4. The sub judice decision was taken under a misconception of law and fact as they failed to consider the academic qualifications of the applicants contrary to the requirements of the scheme of service.
5. The respondents acted in excess and/or in abuse of powers. 5

Relevant to the issues raised by these recourses are the careers and qualifications of the applicants and the interested party. Applicant Petrides, attended the Greek Gymnasium of Polis and the Pancyprrian Gymnasium Nicosia from which he graduated in 1954. In the years 1961-1962 he obtained a diploma in Byzantine Music. He is an Associate of the Library Association and he participated in a UNESCO Course for Teachers of Librarianship from 1st August to 30th November 1970. In 1976 he obtained an M.A. of Library Studies and he has passed the following examinations of the Cyprus Certificate of Education, namely English Higher, Greek Higher, Mathematics "A" and "B" History and Geography. 10 15

He entered the government service as a Clerical Assistant of the General Clerical Staff on the 13th August 1956, and with the establishment of the Greek Communal Chamber in 1960 he accepted an appointment thereto when upon its dissolution he was emplaced in the Public Service by virtue of the provisions of the Competence of the Greek Communal Chamber (Transfer of Exercise) and Ministry of Education Law 1965, Law No. 12 of 1965, as a Clerk second grade on the 1st February 1966, and he became a secretary/library supervisor in the Ministry of Education on the 1st December 1967. In his application for the subject post (exhibit A) there appear details of his qualifications and the comment of Mr. Serghis, the Cultural Officer of the Ministry recorded therein, when he forwarded it to the Public Service Commission, reads: "He is an experienced and hard-working officer with exceptional qualifications in his field." 20 25 30

Applicant, Stephanou, graduated the Paphos Gymnasium in 1950, he obtained a Brief Business Course Certificate of the University of Beirut in the years 1952-1954, he attended a course in library work at U.S.A. from April to July 1966 and during the years 1974-1978, he obtained a diploma of the School of 35

Philosophy of the University of Ioannina. He became a schoolmaster in the Secondary Schools, Ministry of Education, on the 1st September 1954 and a Librarian in the Paedagogical Academy on the 1st August 1959 until 1964 when he became a School Clerk 1st grade. His application for the subject post, which contains all relevant particulars was forwarded to the respondent Commission by the Head of the Department of Higher and Secondary Education without any comments.

The interested party graduated the Pancyprian Gymnasium and obtained a diploma in Social Sciences from the University of Geneva. She became a School-Mistress, secondary schools of the Ministry of Education on the 15th September 1971 and she was seconded until the 6th February 1977 as a Research Officer at the Welfare Research Centre of the Ministry of Education. Thereafter she was seconded as an Assistant Cultural Officer in the Cultural Service of the said Ministry until the sub judice decision was taken in her favour on the 16th April. Her application for the subject post to the respondent Commission was forwarded by Mr. P. Serghis, Cultural Officer of the Ministry with the comment that "she is distinguished for general intellectual culture, exceptionally conscientious with zeal and ability." She has been one of the three authors of "Lysi: Social Change in a Cypriot Village", a book published by the Social Research Centre of the Ministry of Education and herself alone the author of the book "Cypriot Woman Rise and Downfall" issued by the Public Information Office, and printed at the Government Printing Office.

It has been argued on behalf of the applicants that the respondent Commission failed to carry out the due inquiry regarding the additional qualifications possessed by them as opposed to the interested party, who as alleged had none and also that these additional qualifications of the applicants were disregarded by the respondent Commission, which also failed to give that special reasoning which is necessary in such instances. In support of this proposition reference has been made to the case of *Vasso Tourpekki v. The Republic* (1973) 3 C.L.R. 593 where at pp. 602-603 I had this to say:

"An inquiry had to be conducted regarding the issue whether or not the applicant possessed the qualifications

which under the scheme of service would be an advantage to a candidate over the other candidates. The general reference to the qualifications of all the candidates serving in the post, does not, in my view, sufficiently disclose whether such material fact, as the possession or not, of a qualification possibly constituting an additional advantage was duly inquired into, and in particular in view of the fact that the details of this course were not in the relevant file before the Commission, but in the possession of the Ministry. Consequently, I find that the Commission has not conducted the sufficiently necessary inquiry into such a most material factor and, therefore, it exercised its discretion in a defective manner; so the sub judge decision of the respondents having been arrived at contrary to the accepted principles of Administrative Law and in abuse or excess of powers, is null and void of no effect whatsoever.

Moreover, the outcome of such inquiry should have appeared in the reasoning of the sub judge decision and in case it was found by the Commission that the diploma possessed by the applicant was constituting an advantage, then convincing reasons should have been given for ignoring it."

In answer to the said argument counsel for the respondent Commission has urged that no special reasoning was required as the applicants were not considered by the respondent Commission to possess any additional qualifications which were disregarded by it. As already mentioned applicant Petrides, holds a Diploma in Byzantine Music from the School of Ecclesiastical Byzantine Music of Th. Kallinicos. He also holds the title of Associate of the Library Association. The former has been considered by the Commission as not relevant to the requirements of the scheme of service, while the latter as not equivalent to a degree. He has also participated in a UNESCO course for Teachers of Librarianship, and finally he holds an M.A. degree of the University of Loughborough in Library Studies, but in view of the fact that he does not hold the basic degree as such, his M.A. could not be considered by the Commission as an additional qualification.

Applicant Stephanou holds a Diploma of the School of Philosophy of the University of Ioannina (a three-year course)

as a basic degree and he also has followed a Brief Business Course (Certificate of the American University of Beirut) from 1952-54 and attended a course in Library work at the U.S.A. from April to July 1966. He, therefore, does not possess any additional qualification in the sense of a post-graduate degree but has had "Study visits abroad".

The interested party Eleni Nikita holds a degree of Social Studies of the University of Geneva, has very good knowledge of the French and English languages and she has had study visits, abroad. She has also participated in extensive and various cultural activities and she has been the authoress of books and articles. Her qualifications and activities have been considered by the respondent Commission as the most suitable, bearing in mind the requirements and duties of the post of Assistant Cultural Officer.

It is clear from the material before me that the respondent Commission interpreted and applied the relevant Scheme of Service in a proper manner and evaluated correctly the qualifications of the applicants and the interested party along with those of all other candidates, having duly inquired into the matter. This appears from the minutes in which its due and cogent reasoning can be found and which in any event is duly supplemented by the material in the relevant files. It is stated therein that it considered the qualifications and experience of the candidates interviewed, as well as their performance during the interview, which included their personality, alertness of mind, general intelligence and the correctness of answers to questions put to them etc.

It is correct that the respondent Commission does not make any particular reference to what under the relevant scheme is considered to be an additional qualification, but that applies to all the candidates as none has been credited with it and it does not appear and no mention is made anywhere that the position of such additional qualification has in any way weighed with them when preferring the interested party as against the other candidates. They emphasize that they consider the personal files of, and the annual confidential reports on the candidates already in the service. They also stated in their minutes that the interested party gave very satisfactory replies to the questions

put to her and that she generally proved to be the best candidate for appointment to the above post having taken into account the comments of the representative of the Ministry of Education Mr. Serghis, who said that her services had been very satisfactory for the post and they also observed that she had studied French and had served as a secondary school-teacher for the French language, a fact which satisfied them that she possessed a good knowledge of French – (i.e.) one of the prevailing European languages -. These are in essence the factors that have affected their choice.

In any event when the respondent Commission speaks of having considered the qualifications of all candidates, must be taken to have considered them as against the totality of the requirements of the Scheme of Service in relation to each of them and his qualifications. Once therefore, this additional qualification was part of those required under the Scheme of Service, and the respondent Commission stated that it had inquired into them, it cannot be validly argued that the matter was not duly inquired into and considered by the respondent Commission. There is, on the contrary nothing to suggest that they omitted to examine same.

The case therefore of *Tourpekki* (supra) is distinguishable as in that case the applicant appeared to possess a qualification which might be considered under the relevant scheme, an additional advantage, which was not possessed by the interested party chosen in her stead and no reasons were given for so ignoring such an advantage. No doubt in the present case, the Commission carried out a due inquiry and gave sufficient reasons on the subject.

It has also been argued that undue importance was given to the recommendations of Mr. Serghis, under whom the interested party was serving on secondment before her appointment. In support of this proposition I have been referred to the case of *Christou v. The Republic*, 4 R.S.C.C. p. 1, where it was observed that the recommendations of the Head of the Department on members of his staff applying for appointment to vacant posts in the Public Service could not have considerable effect on the selection and appointment by the Public Service Commission of the most suitable candidates for such post, if there were other

candidates also who were not known to such Head of Department and consequently he was not in a position to state anything about the suitability of the great number of the other candidates, whom he did not know at all.

5 Mr. Serghis was present there in the place of the Director-General of the Ministry of Education, who was on that day absent abroad and therefore unable to attend and his presence in addition was justified under section 18 of the Public Service Law 1967, which provides inter alia that "The Commission may
10 require_____ any public officer to attend and_____ assist the Commission concerning any matter which the Commission is required to consider in the exercise of its functions...."

In fact, as stated in the relevant minutes he assisted the respondent Commission at the interviews by putting also himself,
15 together with the Commission, 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. He then supplied the information already referred to and gave his opinion to her suitability for the post
20 in which, to use what was said in the case of *Zafirides v. The Republic* (1980) 3 C.L.R. 140 at p. 147:

"... there is nothing in that opinion to suggest clearly a comparison with, or if that amounted to a preference as against, the other candidates. In other words it is not
25 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 cannot by itself be equated to a recommendation of that officer for appointment or promotion to
30 a post in preference to others or that the suitability of one implies the unsuitability of other candidates."

Needles to say that the views expressed by Mr. Serghis at the meeting of the respondent Commission were duly born out from
35 the comments he made on the application of the interested party when forwarding same to the respondent Commission. Connected with this ground is the contention that the secondment of the interested party to the post of Assistant Cultural Officer, being a temporary measure and of no permanent effect,

could not constitute an advantage in her favour and was wrongly taken into consideration. (See *Papahadjis*, System of Administrative Law applicable in Greece (1976) p. 347; *Conclustons of the Case Law of the Greek Council of State*, 1929 - 1959 at p. 341; *Kyriakopoulos*, Law of Civil Servants (1957) p. 346; Decision 460/65 of the Greek Council of State; *V. Tourpeki v. Republic* (supra) and *Georghios Lyonas v. Republic*, (1975) 3 C.L.R. 536). Noone would disagree with these legal principles regarding secondments but nevertheless I find nowhere in the minutes of the respondent Commission to support such allegation that her secondment was in any way considered in her favour or unduly taken into account. 5 10

It was further contended that the subject decision should be annulled as it was taken under a misconception of fact in that the personal files of Petrides contrary to what is stated in the minutes of the meeting of the 22nd January 1979, (appendix 7), was not in fact before the respondent Commission. 15

In support of the aforesaid proposition Mr. Nikos Theocharides, Registrar of the Supreme Court, in charge of the Revisional Jurisdiction of the Court Registry, gave evidence and produced the file of recourse No. 225/78 in which among the exhibits there were the personal file and the confidential reports on applicant Petrides, and stated that if these exhibits ever left the Court he would have known about it as he keeps a record of all exhibits which are returned temporarily or for good to the Public Service Commission. What, however, emerges from a perusal of this file is that the personal file and confidential reports on the said applicant were first produced as exhibits therein on the 23rd June, 1979, that is long after the meeting of the respondent Commission, at which the subject decision was taken and therefore no question could arise on the respondent Commission requesting the Court through this Registrar to return these files to them for their meeting of the 22nd January, 1979, since the files were not at that time in the custody of the Court. I see, therefore, no reason to question the accuracy of the statement of the respondent Commission in its minutes to the effect that the personal files and confidential reports of all the candidates were before it. 20 25 30 35

Also, applicant Stephanou has alleged in his written address

that the respondent Commission did not have before it the complete facts concerning his qualifications and work, as he had the suspicion that there might be two personal files on him, the one kept at the Ministry and the other with the Commission.

5 He has, however, adduced no evidence in support of this general and vague allegation based on suspicion and I am not prepared to give it any weight once the relevant files which have been made exhibits in this Court were before the respondent commission with all their contents. After all, in the confidential

10 reports of every year there exist the appropriate headings under which each officer may give any additional qualifications, certificates, diplomas etc. that he obtained during the preceding 12 months, and if he failed to do so he has only himself to blame. Furthermore, he could have himself given all the particulars by

15 including them in his application for the post in Form General 6G, which he was required to, and he did submit in order to be treated as a candidate for the post.

Finally, the applicants have contended that the respondent Commission failed in its paramount duty to select the most

20 suitable candidate for the post and relied in that respect on the authority of *Theodossiou v. The Republic*, 2 R.S.C.C. p. 44; *Evangelou v. The Republic*, (1965) 3 C.L.R. 292; and *Bagdades v. The Central Bank of Cyprus* (1973) 3 C.L.R. 417.

On the totality of the material before me, I find that this

25 contention cannot succeed either. The subject decision was reasonably open to the respondent Commission which has exercised its relevant discretionary powers within the proper limits for the purpose, and in arriving at the subject decision there has been neither a misconception of law nor of fact nor

30 any abuse or excess of power, moreover, it was reached after a due and proper inquiry and it is duly reasoned.

For all the above reasons, these recourses are dismissed, but in the circumstances, I make no order as to costs.

35 *Recourses dismissed. No order as to costs.*