

1982 May 5

[TRIANTAFYLLOIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ELENI D. CONSTANTINOY,

*Applicant.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF HEALTH AND OTHERS,

*Respondents.*

(Case No. 189/79).

*Public Officers—Schemes of service—Qualifications—Possession by a candidate—Judicial control of relevant decision of the Commission—Principles applicable.*

*Public Officers—Promotions—Seniority—Can only tip the scales in favour of a candidate if all other factors are equal—This was not so in the present case in view of the more favourable confidential reports of the interested party and the recommendations of the Head of Department—Up to the applicant to establish her striking superiority over the interested party but she failed to do so.* 5

The applicant, a radiographer, was a candidate for promotion to the post of Senior Radiographer, a “first entry and promotion” post. The Public Service Commission by its decision promoted the interested party and hence this recourse by the applicant. 10

Counsel for applicant mainly contended; 15

(a) That the interested party was not qualified for promotion inasmuch as she had not a “good knowledge of the English language”, as required by the scheme of service;

(b) That applicant was strikingly superior in merit to the interested party and was senior to the interested party. 20

5 In taking the sub judge decision the respondent Commission found that the interested party possessed a good knowledge of English in view of the fact that she is a graduate of a secondary education school at which the English language was one of the subjects taught and, also, in view of her long and satisfactory Government service. Applicant was senior to the interested party by about 4 years but the latter had been evaluated in a more favourable manner than the applicant in the confidential reports and had been recommended for promotion by the Head of Department.

10 *Held*, (1) that the Supreme Court will not interfere with a decision of the Public Service Commission that a candidate possesses the qualifications required by a scheme of service unless it is satisfied that such decision was not, in the circumstances, reasonably open to the Commission; that in the present instance it was reasonably open to the respondent Commission to find that the interested party possessed a good knowledge of the English language, as required by the relevant scheme of service (*Georghiades v. Republic* (1967) 3 C.L.R. 653 distinguished); accordingly contention (a) should fail.

15 (2) That seniority could tip the scales in favour of the applicant only if she was equal in all other respects to the interested party; that this was not so in the present case because the interested party had been evaluated in a more favourable manner in the confidential reports than the applicant and had been recommended for promotion by the Head of Department; that, therefore, it has not been established at all to the satisfaction of this Court that the applicant was strikingly superior to the interested party, as contended by her counsel; and it was up to the applicant to establish her striking superiority over the interested party; that, on the contrary, the interested party was much superior in merit to the applicant; accordingly the recourse should fail.

*Application dismissed.*

35 Cases referred to:

*Josephides v. Republic*, 2 R.S.C.C. 72 at pp. 76, 77;

*Petsas v. Republic*, 3 R.S.C.C. 60 at p. 63;

*Neophytou v. Republic*, 1964 C.L.R. 280 at p. 289;

*Phylactou v. Republic* (1973) 3 C.L.R. 444 at pp. 452, 453;

- Michael (No. 1) v. Republic* (1975) 3 C.L.R. 136 at p. 141; and  
on appeal (1975) 3 C.L.R. 432 at p. 436;
- Stylianou v. Public Service Commission* (1980) 3 C.L.R. 11 at  
pp. 17, 18;
- Georghiadis v. Republic* (1967) 3 C.L.R. 653; 5
- Tapacoudis v. Republic* (1981) 3 C.L.R. 9 at pp. 12, 13;
- Ioannou v. Electricity Authority of Cyprus* (1981) 3 C.L.R. 280  
at p. 303, 304;
- Andreou v. Cyprus Broadcasting Corporation* (1975) 3 C.L.R.  
467 at pp. 475, 476; 10
- Andreou v. Republic* (1979) 3 C.L.R. 379 at p. 387.

### Recourse.

Recourse against the decision of the respondents to promote the interested party to the post of Senior Radiographer (Radiodiagnostic) in preference and instead of the applicant. 15

*A. Eftychiou*, for the applicant.

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

*Cur. adv. vult.*

TRIANTAFYLLIDES P. read the following judgment. By the present recourse the applicant seeks, in effect, the annulment of the decision of the respondent Public Service Commission, dated 7th December 1978, which was published in the Official Gazette of the Republic on 27th April 1979, and by means of which Georghia Vanelli (to be referred to hereinafter as the "interested party") was promoted to the post of Senior Radiographer (Radiodiagnostic). 20 25

The salient facts of this case are as follows:

According to the relevant scheme of service the post of Senior Radiographer (Radiodiagnostic) is a "First Entry and Promotion Post". 30

A vacancy in the said post was advertised in the Official Gazette on 6th October 1978 and the applicant and the interested party were among those who applied for appointment.

At its meeting of 7th December 1978 the Commission, after having interviewed five candidates—including the applicant and the interested party—in the presence of the Director of 35

the Department of Medical Services and of the Specialist in charge of the Radiodiagnostic Section of the Nicosia General Hospital, reached the sub judice decision. The relevant parts of the minutes of the Commission read as follows:

5        “The Commission as well as the Representatives of the Department of Medical Services 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.

10        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.).

15        The Personal files and the Annual Confidential Reports of all the candidates were also taken into consideration.

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20        From the candidates interviewed, the Commission observed that Ioanna P. Kaplani and Georghia Vanelli gave very satisfactory replies to questions put to them and generally they proved to be the best candidates for promotion to the above post.

25        The Director of the Department of Medical Services agreed that Ioanna P. Kaplani and Georghia Vanelli were the best; he added, however, that Mrs. Georghia Vanelli had been performing the duties of Senior Radiographer at the Limassol Hospital for more than a year and, as the vacant post of Senior Radiographer was intended for that Hospital, he would prefer Mrs. Vanelli for promotion to the above post.

30        According to the relevant scheme of service, candidates for appointment or promotion to the post of Senior Radiographer (Radiodiagnostic) must possess ‘a good knowledge of English’. The Commission observed that Ioanna P. Kaplani and Georghia Vanelli had graduated from a Six-  
35        year Secondary School in which the English language

was one of the subjects taught. In view of the above, and having regard to their long and satisfactory service in the Government, the Commission was satisfied that the officers in question did possess 'a good knowledge of English'.

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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 Mrs. Georghia Vanelli was on the whole the best. The Commission accordingly decided that Mrs. Georghia Vanelli be promoted to the permanent post of Senior Radiographer (Radiodiagnostic) w.e.f. 1.3.79".

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The applicant was informed, by letter dated 12th April 1979, that she was not selected for promotion.

Counsel for the applicant has contended that the interested party was not qualified for promotion inasmuch as she had not a "good knowledge of the English language", as required by the scheme of service.

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From a comparison of the Government service and qualifications of the applicant and of the interested party it appears that the applicant graduated from the Pancyprian Gymnasium, that she passed the examinations of the Cyprus Certificate of Education in English Lower, English Higher, Greek Higher, Mathematics "A" and History, and that she possesses a Certificate of Radiographer. She served as an Assistant Radiographer from 1st February 1954 to 30th April 1961, and as a Radiographer from 1st May 1961 onwards. The interested party graduated from the Athenaidion Gymnasium and possesses a Certificate that she completed successfully a three years' course in Radiography at the Nicosia General Hospital. She has served as an Assistant Tuberculosis Health Visitor from 1946 to 1958, as an Assistant Radiographer from 20th January 1958 to 30th April 1961, and as a Radiographer from 1st May 1961 to 28th February 1979.

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As it appears from the already quoted in this judgment parts

of its minutes, the respondent Commission found that the interested party possessed a good knowledge of English in view of the fact that she is a graduate of a secondary education school at which the English language was one of the subjects taught and, also, in view of her long and satisfactory Government service; presumably, the Commission thought that during such service, and especially because of its nature, the interested party must have had opportunities to keep up using and improving the good knowledge of English which she must have acquired at the secondary education level.

As has been held in, inter alia, *Josephides v. The Republic*, 2 R.S.C.C. 72, 76, 77, *Petsas v. The Republic*, 3 R.S.C.C. 60, 63, *Neophytou v. The Republic*, 1964 C.L.R. 280, 289, *Phylactou v. The Republic*, (1973) 3 C.L.R. 444, 452, 453, *Michael v. The Republic (No. 1)*, (1975) 3 C.L.R. 136, 141, and, on appeal, *Michael v. The Republic (No. 2)*, (1975) 3 C.L.R. 432, 436, and *Stylianou v. The Public Service Commission*, (1980) 3 C.L.R. 11, 17, 18, the Supreme Court will not interfere with a decision of the Public Service Commission that a candidate possesses the qualifications required by a scheme of service unless it is satisfied that such decision was not, in the circumstances, reasonably open to the Commission. In the present instance I am satisfied that it was reasonably open to the respondent Commission to find that the interested party possessed a good knowledge of the English language, as required by the relevant scheme of service and that, furthermore, this case is clearly distinguishable, on its facts, from that of *Georghiades v. The Republic*, (1967) 3 C.L.R. 653, which has been relied on by counsel for the applicant.

It has been submitted, also, by counsel for the applicant, that she was strikingly superior in merit to the interested party, and, furthermore, that the applicant was senior to the interested party in the post of Radiographer and in the post of Assistant Radiographer.

It is correct that the applicant was appointed in the post of Assistant Radiographer about four years before the interested party. Then the applicant was appointed as a Radiographer as from 1st May 1961, whereas the interested party was appointed on an unestablished basis to the same post as from

the same date and was given a permanent appointment to such post as from 1st November 1965. But seniority could tip the scales in favour of the applicant only if she was equal in other respects to the interested party (see, inter alia, *Tapacoudis v. The Republic*, (1981) 3 C.L.R. 9, 12, 13 and *Ioannou v. The Electricity Authority of Cyprus*, (1981) 3 C.L.R. 280, 303); and, as it appears immediately hereinafter, this was not so in the present instance. 5

From a perusal of the relevant confidential report files it is, in my opinion, obvious that the interested party had been evaluated, in respect of the years of service prior to her sub- 10  
 judice promotion, in a more favourable manner than the applicant. Also, as it appears from the already quoted minutes of the respondent Commission the interested party was recom- 15  
 mended for promotion by the Director of the Department of Medical Services. So, it has not been established at all to my satisfaction that the applicant was strikingly superior to the interested party, as contended by her counsel; and it was up to the applicant to establish her striking superiority over the interested party (see, inter alia, *Andreou v. The Cyprus Broadcasting Corporation*, (1975) 3 C.L.R. 467, 476). On 20  
 the contrary, it is clear that the interested party was much superior in merit to the applicant.

In the *Andreou* case, supra, A. Loizou J. stated the following (at pp. 475, 476): 25

“It is indeed a cardinal principle of administrative law that it is the paramount duty of an appointing organ in effecting appointments or promotions, to select the candidate most suitable in all the circumstances of each particular case for the post in question. This was first set out in 30  
 the much quoted case of *Theodossiou and The Republic*, 2 R.S.C.C., p. 44 at p. 47 and reiterated in a long series of cases. (Vide, inter alia, *Phylactou v. The Republic*, (1973) 3 C.L.R. 444 at p. 455 and *Korai and Another v. The C.B.C.*, (1973) 3 C.L.R. 546 at p. 566). The burden, 35  
 however, is on the applicant to establish that he possesses striking superiority over the interested party, and in the case in hand, it has not been established by the applicant that he possesses such striking superiority”.

Useful reference may be made, also, in this respect, to the cases of *Andreou v. The Republic*, (1979) 3 C.L.R. 379, 387 and *Ioannou*, supra, 304.

5 Having taken in the present case into consideration every relevant factor and having duly weighed all that has been put forward by counsel on both sides, I am of the opinion that the respondent Public Service Commission in promoting the interested party has exercised its relevant discretionary powers in a proper manner which was reasonably open to it on the basis  
10 of all the available material before it; and, therefore, this recourse has to be dismissed; but I have decided not to make an order as to costs against the applicant.

*Recourse dismissed. No order as to costs.*