

1983 November 28

[Pikis, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DEMETRIS A. PAPADOPOULOS

Applicant

v.

THE REPUBLIC OF CYPRUS, THROUGH
1 THE PUBLIC SERVICE COMMISSION,
2 THE ADVISORY BOARD.

Respondents

(Case No 421/83)

Administrative Law—Executory act—Advisory Committee set up under section 34 of the Public Service Law 1967 (Law 33/67)—Recommendations of for filling of post—An executory act which can be made the subject of a recourse

5 *Public Officers—Filling of posts—Advisory Committee set up under section 34 of the Public Service Law 1967 (Law 33/67)—Recommendations of—Wrongly based on impressions gained at the interview of candidates—Inquiry made into the merits of candidates inadequate—Reasoning defective in that no due regard*
10 *was given to the service records of applicant—Such records contradicting the decision of the Committee that applicant unsuitable for promotion—Sub judice decision annulled*

15 *Administrative Law—Public officers—Filling of posts—Recommendations of Advisory Committee set up under section 34 of the Public Service Law, 1967 (Law 33/67)—Annulled through inadequacy of reasoning, absence of inquiry into the merits of the candidates, and because they were contradicted by applicant's service records*

20 The applicant in this recourse challenged the validity of the decision of the Advisory Committee set up under section 34 of the Public Service Law, 1967 (Law 33 of 1967) embodying

the recommendations of the Committee for the filling of four posts of District Officer, a first entry and promotion post, whereby the applicant was excluded from the list of candidates recommended for promotion

The Advisory Committee excluded the applicant because of the impressions gathered at an interview 10 months earlier, notwithstanding the absence of any specific minute recording such impressions 5

Counsel for the respondents conceded that the sub judge decision was defective and ought to be set aside in view of the inadequacy of the inquiry made by the Advisory Committee on the merits of the candidates for promotion and the insufficiency of the reasoning accompanying the decision. Also, it was taken in disregard of the service record of applicant and his confidential reports 10 15

Held, (after concluding that the sub judge decision is in itself executory and can be made the subject of a recourse) that although the impressions gained at an interview as to the personality of a candidate are relevant to the choice of a candidate for promotion, especially if the post carries, as the post of a District Officer does, serious administrative responsibilities, it cannot be decisive and, certainly, does not outweigh the merits of a candidate as they emerge from his confidential reports, that, moreover, an Advisory Committee set up under s 34 of Law 33/67 should be slow to exclude a candidate on account of the impressions gained at the interview for the evaluation of the personality of a candidate is primarily a matter for the body charged to make the ultimate decision—in this case the Public Service Commission; that the minutes of the Advisory Committee indicate that the inquiry made into the merits of the candidates suitable for promotion was, as acknowledged, inadequate, that, further, the reasoning is defective, as again acknowledged, for it discloses that the Advisory Committee paid little, if any, regard to the service record of the applicant, that these records contradict the decision of the Committee that applicant is unsuitable or ineligible for promotion, accordingly the sub judge decision must be annulled 20 25 30 35

Sub judge decision annulled

Cases referred to

Michaeloudes and Another v Republic (1979) 3 C L R 36, 40

Ioannou v. Electricity Authority (1981) 3 C.L.R. 280;

Chryssafinis v. Republic (1982) 3 C.L.R. 320;

Papadopoulos v. Republic (1982) 3 C.L.R. 1070;

5 *Medcon Construction and Others v. Republic* (1968) 3 C.L.R. 535;

Stylianou and Another v. Republic (1980) 3 C.L.R. 11;

Savva v. Republic (1980) 3 C.L.R. 675;

Marathevtou and Others v. Republic (1982) 3 C.L.R. 1088.

Recourse.

10 Recourse against the decision of the Advisory Committee, set up under section 34 of the Public Service Law, 1967 (Law No. 33/67), whereby applicant was excluded from the list of candidates recommended for promotion to the post of District Officer.

15 *A.S. Angelides*, for the applicant.

N. Charalambous, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

20 ΠΙΚΙΣ J. read the following judgment. The recourse aims at the annulment of the decision of the Advisory Committee set up under section 34 of the Public Service Law No. 33 of 1967, embodying the recommendations of the Committee for the filling of four posts of District Officer, a first entry and promotion post, whereby the applicant was
25 excluded from the list of candidates recommended for promotion. The decision was acted upon by the Public Service Commission as evidenced by a letter addressed on behalf of the Commission to the advocate of the applicant on 5th October, 1983 (exhibit 2).

30 Originally, counsel for the respondents objected to the justiciability of the act complained of on the ground that it was not executory. The objection was subsequently waived upon acknowledgment that the act is executory and amenable
35 to judicial review. As I commented then, and I repeat now, this acknowledgment was soundly made in view of the nature of the act and its repercussions upon the position of the applicant.

An act that forms a distinct part of a composite administrative

process may be executory depending on its repercussions and the manner and degree to which it affects the position of the applicant in the service. That it is part of a composite process is not in itself decisive. Here, as with respect to every administrative act, the test is whether the decision is productive of legal consequences that in turn falls to be determined by reference to the implications of the decision upon the position of the party affected thereby. An executory act in this sense is often contrasted with a preparatory act, limited in purport to elucidating the background to an executory decision. If an act in the process of a composite act is severable from the rest and in itself productive of legal consequences, it is actionable by way of judicial review. Undoubtedly the recommendations of the Advisory Committee were, having regard to the status of the post of a District Officer as a specialised position, a prerequisite to a valid appointment by the Public Service Commission and in effect directly relevant to the prospects of promotion of the candidates. The negative decision of the Advisory Commission amounted in effect to a rejection of the applicant as a candidate for promotion to the post of District Officer.

The decisions of the Supreme Court in *Michaeloudes & Another v. The Republic*, (1979) 3 C.L.R. 36, and *Ioannou v. Electricity Authority*, (1981) 3 C.L.R. 280, are directly on the point and establish that acts predetermining eligibility to promotion are in themselves executory and, therefore, justiciable in themselves. (For a review of the attributes of an administrative act see *Chryssafinis v. The Republic*, (1982) 3 C.L.R. 320).

Being validly possessed of the matter, I must review the recommendation of the Advisory Committee embodied in their letter to the Public Service Commission of 16th September, 1983 (Appendix 19 to the opposition). In adjudicating upon the merits of the application I can be briefer than might otherwise be necessary because of the acknowledgment and admission made by counsel for the respondents that the decision is defective and ought to be set aside in view of the inadequacy of the inquiry made by the Advisory Committee on the merits of the candidates for promotion and the insufficiency of the reasoning accompanying the decision.

From the statement of Mr. Charalambous a third reason may be deduced for annulling the decision, if not included in the aforementioned two reasons, that is, that the decision respecting the exclusion of applicant was taken in disregard
5 of his service record and confidential reports that appear in his file. In such circumstances, Mr. Charalambous submitted, it was unnecessary to produce the personal files of the candidates or the applicant. I must put on record my appreciation of the
10 approach of Mr. Charalambous to his duties, an approach that puts counsel's duty to aid the Court administer justice according to Law as being paramount. There is no doubt that in the hierarchy of counsel's duties his duty to the Court comes first. This is one of the pillars upon which justice is administered.

15 A review, brief as it may be, of the deliberations of the Advisory Committee demonstrates convincingly the soundness of the stand taken by counsel for the Republic. They went about the discharge of their duties, as will appear from what is recorded below, in a most summary manner and without
20 proper regard to the functions they were required to perform.

The position of a District Officer was declared as a specialized one, a fact necessitating the setting up of an Advisory Committee under s. 34 of Law 33/67 as a prelude to the filling of the posts by the Public Service Commission. An Advisory Committee
25 was set up consisting of Mr. K. Christofi, Director-General of the Ministry of Interior, Mr. M. Erotokritos, Director-General of the Ministry of Industry & Trade, and Mr. M. Phylactou, Director-General of the Ministry of Defence

Their first attempt to make recommendations was totally
30 abortive for they purported to make their recommendations without reference to the service records of the candidates. They rested their recommendations solely on the impressions gathered at the interview of the candidates. (See Appendix 5 to the opposition). The Public Service Commission drew their
35 attention to the inadequacy of their inquiry and invited them to consider the matter afresh. (See Appendices 6 and 7 to the opposition).

The second attempt made by the Advisory Committee to

discharge their functions was equally abortive. (See Appendix 15). Only two of the three members of the Committee met in session to advise in breach of the rules governing the deliberations of collective organs. Once more the Public Service Commission invited them to remedy the situation and review the matter afresh in proper coram. 5

The third attempt to deliberate and advise, culminating in the decision of the 13th September, 1983, is the subject matter of this recourse. (See Appendix 19). As noted above, it is acknowledged this decision is ill-founded for lack of proper inquiry into the merits of the candidates for promotion and defective reasoning. It is noteworthy that on all three occasions the same seven candidates were recommended. To say the least, one is apt to form the impression that the Advisory Committee persisted in the views gained at the interviews on the candidates and remained unaffected by considerations of merit as revealed in their service records, particularly their confidential reports. These recommendations, as Mr. Charalambous acknowledged, with regard to the applicant do not stand the test of scrutiny on a consideration of the service records of the applicant. Time and again it has been pointed out that confidential reports are the best pointer to a candidate's claim to promotion. (*Papadopoulos v. The Republic*, (1982) 3 C.L.R. 1070). 10
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Rather surprisingly the Advisory Committee excluded the applicant because of the impressions gathered at an interview some 10 months earlier, notwithstanding the absence of any specific minute recording such impressions. 25

The value of proper records as a prerequisite for a valid decision was stressed, inter alia, in the case of *Medcon Construction & Others v. The Republic*, (1968) 3 C.L.R. 535. Although the impressions gained at an interview as to the personality of a candidate are relevant to the choice of candidates for promotion, especially if the post carries, as the post of a District Officer does, serious administrative responsibilities, it cannot be decisive and, certainly, does not outweigh the merits of a candidate as they emerge from his confidential reports. (See *Stylianou & Another v. The Republic—Public Service Commission*, (1980) 3 C.L.R. 11; *Savva v. The Republic*, 30
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(1980) 3 C.L.R. 675; *Marathevtou and Others v. The Republic*,
(1982) 3 C.L.R. 1088).

5 Moreover an Advisory Committee set up under s.34 should
be slow to exclude a candidate on account of the impressions
gained at the interview for the evaluation of the personality
of a candidate is primarily a matter for the body charged to
make the ultimate decision—in this case the Public Service
Commission.

10 The minutes of the Advisory Committee indicate that the
inquiry made into the merits of the candidates suitable for
promotion was, as acknowledged, inadequate Further, in
my judgment, the reasoning is defective, as again acknowledged,
for it discloses that the Advisory Committee paid little, if any,
15 regard to the service record of the applicant. These records,
as Mr. Charalambous admitted, contradict the decision of the
Committee that applicant is unsuitable or ineligible for
promotion.

For all the above reasons the sub judice decision is set aside.

Order accordingly.

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Sub judice decision annulled.