

1983 March 18

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS LEONTIOU.

*Applicant.*

v.

THE REPUBLIC OF CYPRUS. THROUGH  
THE PUBLIC SERVICE COMMISSION.

*Respondent.*

(Case No. 398/80).

5 *Public Officers—Appointments and promotions—Officer not possessing the qualifications required by the scheme of service for a particular post—He does not possess a legitimate interest to challenge by a recourse the appointment of somebody else in that post.*

*Public Officers—Promotions—Right to promotion not protected by Article 192 of the Constitution—There is no vested right for promotion.*

10 The applicant, a Prison Warder, challenged the validity of the promotion of the interested parties to the post of Senior Warder of Prisons. Counsel for the applicant mainly contended:

15 (a) That there was a defective or bad exercise of the discretionary power of the administration and/or excess of the limits of the discretionary powers and/or misconception of facts, in that the respondent did not choose the applicant for promotion, who was better than the interested parties.

20 (b) That there was a contravention of Article 192 of the Constitution which safeguards the conditions of service of public officers, such as the applicant, who were appointed prior to the Constitution.

From a perusal of the personal file of the applicant it appeared

that he did not possess the qualifications required under the relevant schemes of service.

*Held*, that it is a well settled principle of Administrative Law that if a candidate does not possess the qualifications required by the schemes of service for the particular post for which he is a candidate, he does not have a legitimate interest to challenge by a recourse the appointment of somebody else in that particular post; that once the applicant has failed to satisfy this Court that he possessed the necessary qualifications for promotion to the post of Senior Warder under the scheme of service he was not eligible to be considered as a candidate for promotion and, therefore, he has no legitimate interest to pursue this recourse.

(2) That the right to promotion is not protected by Article 192 of the Constitution and that applicant has no vested right for promotion.

*Application dismissed.*

Cases referred to:

- Constantinidou v. Republic* (1974) 3 C.L.R. 416 at p. 418;  
*Panayides v. Republic* (1973) 3 C.L.R. 378 at pp. 382, 383;  
*Sofocleous (No.2) v. Republic* (1972) 3 C.L.R. 637;  
*Arsalis v. Republic* (1976) 3 C.L.R. 255;  
*Paraskevopoulou v. Republic* (1980) 3 C.L.R. 647 at pp. 657, 659;  
*Karayianni and Others v. The Educational Service Committee*  
 (1979) 3 C.L.R. 371;  
*Proestou v. Republic* (1981) 3 C.L.R. 314;  
*Christodoulou v. CYTA* (1973) 3 C.L.R. 965 at pp. 700, 701;  
*Economides v. Republic* (1972) 3 C.L.R. 506 at p. 520;  
*Piperis v. Republic* (1967) 3 C.L.R. 295 at p. 299.

**Recourse.**

Recourse against the decision of the respondent to promote the interested parties to the post of Senior Warder in the Department of Prisons in preference and instead of the applicant.

*M. Christofides*, for the applicant.

*Cl. Antoniadis*, Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

SAVVIDES J. read the following judgment. This recourse is connected with Recourse No. 328/80 in that they both attack the same act by which the five interested parties were promoted to the post of Senior Warder of Prisons, instead of the applicant.

5 The facts of the case are as follows:

The applicant is a prison warder appointed as temporary in 1952 and as permanent in 1956, a post which he holds till today. In 1979 the Director-General of the Ministry of Justice asked the Public Service Commission by letter (Appendix 1) to take  
10 the necessary steps for the filling of five vacancies in the post of Senior Warder in the Department of Prisons. A Departmental Committee was set up which finally submitted its recommendations to the Public Service Commission on 18.3.1980 (see Appendix 8 attached to the opposition). The Departmental  
15 Committee submitted a list of 20 prison warders who were selected by it as the best candidates for promotion. It also submitted another list containing the names of 79 other prison warders who satisfied the schemes of service regarding the post of senior warder, with its comments for each one of them (see  
20 pages 2-6 of the minutes of the Departmental Committee dated 15.3.1980). The name of the applicant did not appear in any of the two lists. The respondent Commission met on 7.7.1980 and after having considered, according to the minutes of the meeting, the personal files, the confidential reports, as well as  
25 the findings of the Departmental Committee and the views and recommendations of the Senior Superintendent of Prisons who was present, decided to promote the five interested parties to the post of Senior Warder. The promotions were published in the Gazette of 22.8.1980.

30 The applicant, having not been promoted filed the present recourse to contest the validity of the sub judice decision, praying for a decision of the Court declaring as null and void of any effect the decision and/or act of the respondent which was published in the official Gazette of the Republic No. 1624 of  
35 22.8.1980 under No. 1510, whereby for the promotion to the post of Senior Warder (Prisons), applicant was excluded and the five interested parties (set out therein) were promoted.

The grounds of law relied upon in support of this recourse, as set out in the application, are as follows:

(1) There is a defective or bad exercise of the discretionary power of the administration and/or excess of the limits of the discretionary powers and/or misconception of facts, in that the respondent did not choose the applicant for promotion, who is better than the interested parties.

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(2) The decision is not duly reasoned.

(3) There is a contravention of Article 192 of the Constitution which safeguards the conditions of service of public officers who were appointed prior to the Constitution.

(4) For the same legal reasons, any decision and/or recommendation of any person or selection committee whereby the persons selected for promotion were so selected and/or recommended for promotion and on which the respondent relied in taking the sub judice decision, is null and void.

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The application was opposed on the ground that the sub judice decision was lawfully taken in the exercise of the discretionary powers of the respondent and on the basis of all material facts and circumstances of the case.

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Counsel for the applicant in his written address has contended that the applicant was wrongfully not considered as a candidate for promotion. The respondent, counsel submitted, in finding that applicant did not satisfy the requirements of the schemes of service, acted wrongfully and under a misconception of facts. He contended that the applicant had a right to be considered for promotion and such right was safeguarded by Article 192 of the Constitution, as he had been appointed prior to the time that the Constitution of Cyprus came into force. He argued, in this respect, that the schemes of service applicable at the time when applicant was appointed, were the same, both in respect of the post of warder and Senior Warder and under such schemes, he was entitled to be considered for promotion to the post of Senior Warder; the schemes of service had been altered to his disadvantage, in that a secondary school graduation certificate has been introduced as a requirement of the schemes of service for both posts. He contended that since with the qualifications he possessed at the time of his appointment he was eligible for promotion and that though the schemes of service have changed, he is still holding the post of a warder with the qualifications

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required at the time and any change in the schemes could not affect his right to be considered as eligible for promotion.

5 Counsel for the respondent, on the other hand, submitted that the respondent rightly did not consider the applicant as a candidate for promotion, in the circumstances of the case, and by doing so, it did not act contrary to Article 192 of the Constitution. He further submitted that Article 192 of the  
10 Constitution does not safeguard the prospects of advancement of public officers. He added that in any case, under the schemes of service, a secondary school graduation certificate was not required for the post of Senior Warder; but the qualifications required are expressly mentioned in the schemes of service were that "candidates should have passed an examination in Prisons  
15 Legislation and Regulations and in matters relating to their duties". The applicant never passed the aforesaid examinations and, therefore, he was not eligible for promotion as not satisfying the prescribed qualifications under the schemes of service.

20 Though the question as to whether the applicant has a legitimate interest to pursue this recourse has not been specifically raised, in view of the allegation that the applicant did not satisfy the prerequisites of the schemes of service, this question has to be considered by me, because before proceeding to consider the merits of this application, I have to satisfy myself that the applicant has a legitimate interest. Such matter is one which  
25 may be examined by the Court *ex proprio motu* (*Constantinidou v. The Republic* (1974) 3 C.L.R. pp. 416, 418).

30 It is a well settled principle of Administrative Law that if a candidate does not possess the qualifications required by the schemes of service for the particular post for which he is a candidate, he does not have a legitimate interest to challenge by a recourse the appointment of somebody else in that particular post (see, in this respect, *Panayides v. The Republic* (1973) 3 C.L.R. pp. 378, 382, 383, *Sofocleous (No. 2) v. The Republic* (1972) 3 C.L.R. p. 637, *Constantinidou and others v. The Republic*  
35 (*supra*), *Arsalis v. The Republic* (1976) 3 C.L.R. p. 255, *Paraskevopoulou v. The Republic* (1980) 3 C.L.R. p. 647 (where at pp. 657, 659 a review of the authorities on the matter is made).

The question, therefore, which poses for consideration is whether the applicant possessed the qualifications required by

the scheme of service to the post of Senior Warder. The relevant scheme of service is attached to the opposition as Appendix 3 'B' and reads as follows:

*“Qualifications required:* Knowledge of Turkish in the case of a Greek officer or Greek in the case of a Turkish officer would be an advantage. Candidates should have passed an examination in Prisons Legislation and Regulations and in matters relating to their duties. Experience and ability in handling prisoners and staff; an upright and firm character, good leadership, and strong physique”.

It is clear from the contents of the above scheme what are the necessary qualifications for making a candidate eligible for promotion to the post of Senior Warder. No secondary school graduation certificate is mentioned as essential, as alleged by counsel for the applicant and, therefore, his argument in this respect was wrongly made.

Counsel for the applicant did not make any argument with regard to the matters expressly referred to in the schemes of service, and in particular, the requirement of examinations in Prisons Legislation and Regulations. It has not been alleged that the applicant did possess such qualification. Furthermore, going through the personal file of the applicant which is an exhibit in the case, I find that there is nothing in such file indicating that the applicant did possess such qualification. Once the applicant has failed to satisfy this Court that he possessed the necessary qualifications for promotion to the post of senior warder under the scheme of service which, in fact, he did not possess, he was not eligible to be considered as a candidate for promotion and in the light of the principles mentioned and the authorities stated above, the applicant has no legitimate interest to pursue this recourse.

From the various appendices to the opposition and in particular appendix 8, it is apparent that the Departmental Committee had before it for consideration the list (Appendix 3) of all prison warders, 104 in number, including the applicant whose personal files were sent to it by the respondent Commission for consideration and recommendation of 20 candidates as the most suitable for promotion. Out of such list, the Departmental Committee elected twenty, whom it recommended,

and its comments in respect of each one of them, appear in the minutes of their meeting which were submitted to the respondent. The Committee further submitted to the respondent a list of 79 other warders who, though not recommended, were satisfying the schemes of service. The comments of the Committee in respect of these warders are also recorded opposite their respective names. Comparing such list to the contents of the list which was before the Departmental Committee (Annex 3) it is clear that 17 out of 79 persons who were not recommended but their names were included in the list submitted to the respondent as satisfying the requirements for promotion under the schemes of service did not in fact possess all such requirements and in particular they had not passed the examinations required by the schemes of service. They are the candidates under Nos 3, 45, 46 and 66 upto 79 in the list of those not recommended for promotion in Appendix 8. However, none of these unqualified officers has either been promoted or included in the list of the 20 officers recommended by the Departmental Committee for promotion. Though the matter has not been raised in the recourse, on the material before me, I find that assuming that there has been an irregularity in the preparation of the list of candidates qualified for promotion, this does not entitle the applicant who is unqualified to be placed on the said list, because there is no right to equal treatment on an illegal basis. *Karayianni and others v. The Educational Service Committee* (1979) 3 C.L.R. 371, *Proestou v. The Republic* (1981) 3 C.L.R. 314, Conclusions from the Case Law of the Greek Council of State (1929-1959) p. 182). Legitimate interest would have existed if any other person not possessing the qualifications was promoted. *Christodoulou v. CYTA* (1973) 3 C.L.R. 695 at pp. 700, 701.

Legal ground 1, therefore, fails, because, as already found, the respondent rightly decided that the applicant did not qualify for promotion and, by not considering him as a candidate, it has not in any way abused its discretionary powers, nor did it act under any misconception either of fact or law.

As to the second ground that the sub judge decision is not duly reasoned, I find such contention untenable. The reasoning of the decision appears clearly in the minutes of the meeting of the respondent of 7.7.1980 (Appendix '10') and leaves no

room for doubt. In any case, once I have found that the applicant has no legitimate interest to pursue this recourse, I find it unnecessary to examine further this ground.

As to the last ground raised by counsel for applicant in that the respondent in not considering the applicant as a candidate for promotion acted in violation of the rights of the applicant which are safeguarded by Article 192 of the Constitution, I find that counsel for applicant must have been acting under a misunderstanding because he argued his case all along on the wrongful assumption that the schemes of service have been altered to applicant's disadvantage by the introduction of a secondary school graduation certificate as a requirement for promotion, which was not necessary before. As already mentioned, no such requirement has been introduced in the schemes of service and, therefore, the whole of the argument was based on a misconception that such certificate was required. He has not argued anything about the condition in the schemes of service requiring the specific examinations mentioned therein and has not mentioned whether such condition was required or not under the original scheme of service. The fact as alleged by counsel for applicant that when those warders who do not possess a secondary school graduation certificate are compared for promotion purposes to those who possess such certificate, they are found in a disadvantageous position and an injustice is created, has nothing to do in the present case, since, as already mentioned, the requirement for such certificate has not been introduced in the schemes of service.

Article 192 of the Constitution, reads as follows:

"1. Save where other provision is made in this Constitution any person who, immediately before the date of the coming into operation of this Constitution, holds office in the public service shall, after that date, be entitled to the same terms and conditions of service as were applicable to him before that date and those terms and conditions shall not be altered to his disadvantage during his continuance in the public service of the Republic on or after that date".

Para. 7 of the same Article, defines the cases where the Article applies. It reads as follows:

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(a) \_\_\_\_\_



(b) 'Terms and conditions of service' means, subject to the necessary adaptations under the provisions of this Constitution, remuneration, leave, removal from service, retirement pensions, gratuities or other like benefits".

5 The right to promotion is not mentioned as one of the rights protected by Article 192 of the Constitution. It has been decided in the case of *Economides v. The Republic* (1972) 3 C.L.R. 506 at p. 520 that:

10 "It may be said here that in my judgment there is no such vested right as a right to promotion or that the required qualification for a particular promotion post will not be changed before any promotion is effected. There is an expectation for it and nothing more".

15 And in the case of *Piperis v. The Republic* (1967) 3 C.L.R. 295 at p. 299, it reads:

20 "Nor do I find any merit in the submission of the applicant that Law 48/65, in fixing a new and lower salary for the post above his own, to which he was expecting to be, and was eventually, promoted, contravenes Article 192 of the Constitution. Under such Article there were not safeguarded the prospects of advancement of public officers, but only the terms and conditions of service of the posts held by them substantively on the 16th August, 1960 (*Shener and The Republic*, 3 R.S.C.C., p. 138).

25 In the light of the above, I find that applicant has no vested right for promotion and, therefore, his last ground of law also fails.

In the result, this recourse is dismissed but in the circumstances of the case I make no order for costs.

30 *Recourse dismissed with no order as to costs.*