

1983 June 7

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

THEOCHARIS (CHARIS) IOANNOU.

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE
MINISTER OF INTERIOR AND DEFENCE,

Respondent.

(Case No. 227/79).

5 *Legitimate interest—Article 146.2 of the Constitution—Reser-
vation of rights by person affected by administrative act—Le-
gitimate interest preserved—Recourse against promotion—
Applicant granted permission to retire following promotions,
reserving at the same time his rights to pursue his legal rights—
He has not lost his legitimate interest.*

*Administrative Law—Delay—Long delay amounts to abuse and
excess of powers.*

10 *Police Force—Promotions—Post of Assistant Chief of Police—
Seniority, qualifications and merit of applicant ignored—Sub
judice promotions annulled.*

15 The applicant in this recourse challenged the validity of the de-
cision of the Minister of Interior, which was taken on the 24th March,
1979, to promote the two interested parties to the post of Assistant
Chief of Police. Following these promotions the applicant by a
letter dated 5th June, 1979 applied to the Chief of Police for per-
mission to retire at the age of 55 and his application was accepted.
At the same time, however, applicant reserved his rights and made
it clear that he intended to pursue his legal rights:

20 The promotions of the interested parties were carried out in ac-
cordance with s.13 of the Police Law, Cap.285. Applicant was
recommended for promotion by the Chief of Police.

Held, on the question whether applicant has lost his legitimate interest to file a recourse, by reason of his retirement: That since applicant has reserved all his rights at the time he applied for permission to retire he has not lost his legitimate interest under Article 146.2 of the Constitution (*Christofides v. Cyprus Telecommunications Authority* (1979) 3 C.L.R.99 at pp. 115, 116 followed). 5

Held, on the merits of the recourse:

- (1) That the long delay in dealing with the case of the applicant amounts to an excess and abuse of power. 10
- (2) That the respondents after keeping silent for a long time indeed finally they went on to appoint the two interested parties in violation of every principle of the law and the administrative law ignoring the seniority, the qualifications and the merits of the applicant; accordingly the recourse should succeed. 15

Sub judice decision annulled.

Cases referred to:

- Ioannou and Another v. Republic* (1979) 3 C.L.R.423 at p. 446;
- Christofides v. Cyprus Telecommunications Authority* (1979) 20
3 C.L.R.99 at pp. 115, 116;
- Nissis v. Republic* (1967) 3 C.L.R.671 at p. 675;
- Katsiaouni v. Republic* (1981) 3 C.L.R. 390 at p. 397;
- Loiziana Hotels Ltd. v. Municipality Famagusta* (1971) 3 C.L.R.
466 at p. 473; 25
- Pavlidis v. Republic* (1978) 3 C.L.R.331 at p. 348;
- Bagdades v. Central Bank of Cyprus* (1973) 3 C.L.R. 417;
- Demosthenous v. Republic* (1973) 3 C.L.R. 354;
- Hadjigeorghiou v. Republic* (1974) 3 C.L.R. 436;
- Kyriacou v. Republic* (1974) 3 C.L.R. 358; 30
- Menelaou v. Republic* (1969) 3 C.L.R. 36 at p. 41;
- Theocharous v. Republic* (1969) 3 C.L.R. 318 at p. 322;
- Georgkiou v. Republic* (1975) 3 C.L.R. 153 at pp. 159-160.

Recourse.

Recourse against the decision of the respondent to promote the interested parties to the post of Assistant Chief of Police in preference and instead of the applicant.

5 *G. Arestis*, for the applicant.

M. Kyprianou, for respondents.

K. Chrysostomides, for interested party No. 2.

Cur. adv. vult.

10 HADJIANASTASSIOU J. read the following judgment. In this recourse the applicant Theocharis Ioannou, a police officer, seeks a declaration that the decision and/or act of the respondent to promote the two interested parties Odysseas Lambrou and Kypros Mourouzides, instead of the applicant is null and void and of no effect whatsoever.

15 *The Facts:*

 The applicant has joined the police force on the 1st February, 1944 and was promoted to the rank of Sergeant as from 1st April, 1955. On the 1st January, 1957, he was promoted to the post of Sub-inspector and again on the 14th November, 1959
 20 to the post of Acting Police Inspector A. Indeed, again on the 16th August, 1960, he became Police Inspector B. On the 1st March, 1967, he was promoted further to the post of Police Inspector A and on the 1st January, 1977, to the rank of Senior Police Inspector. As from August 1963 and until the end of
 25 1963 as well as from May 1970 till September, 1978, he became an administrator of the school for police officers, a post which is considered as a very responsible post for the police force. During his whole career he had served in responsible posts which pre-supposed high qualifications and loyalty to the force. In
 30 addition, the applicant in 1968 had received further education at the Police College in England and also had represented the Cyprus Police Force at two seminars given by the Interpol in England.

35 In spite of the merits, qualifications, seniority and recommendations by his superiors, on 29th March, 1979, the two interested parties Odysseas Lambrou and Kypros Mourouzides were

selected and promoted by the Minister of the Interior to the post of Assistant Chief of Police, the first one as from the 15th March, 1979, and the second as from the 4th April, 1979. (See exhibit A).

Grounds of Law:

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The present application was based on the following legal points: (1) The respondents have acted contrary to the law and in excess and/or in abuse of their power without taking into consideration the superior qualifications and the experience of the applicant. (2) The respondents have failed to exercise their duty in selecting the best candidate. (3) The respondents have ignored and/or have not taken into consideration the seniority and/or the experience of the applicant without putting forward sufficient reasons. (4) The respondents have exercised their discretionary powers in a defective manner and have acted contrary to the law and/or in abuse of powers. (5) The decision of the respondents is not duly reasoned and their reasoning of the said decision is wrong and contrary to the law, and/or defective.

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Grounds of Law for respondents:

On the contrary, counsel for the respondents opposed the application of the applicant, and the present opposition is based on the following grounds of law: (1) That the applicant does not possess present legal interest in order to allow him to attack the decision of the respondents. (2) The act attacked and or decision of the respondent is correct and was taken legally and in accordance with the law and of the relevant provisions of the Constitution as well as the principles of administrative law. (3) The act and/or the decision attacked is duly reasoned and after examination of all the relevant facts, and after exercising their discretionary powers correctly.

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The following facts are relied upon in the opposition. On the 1st January, 1977, the applicant was recommended for promotion to the post of Senior Police Inspector and the Director-General of the Ministry of the Interior notified him of this by a letter No. FP(P)30 dated 4th January, 1977. The applicant by a letter dated 4th January, 1977, replied that he had accepted the offer. In spite of that offer and acceptance the Director-General

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of the Ministry of the Interior on the 8th February, 1977, informed the applicant that the Minister had revoked his promotion pending the investigations against him of certain information which had been received in the Ministry of the Interior.

5 In the light of that letter the applicant applied and was granted leave of absence for a period of 361 days and in effect he was absent on leave from the service as from 11th January, 1977 till the 6th February, 1978. In the meantime, the applicant had filed a recourse under No. 111/77 against the Minister of the

10 Interior with regard to the revocation of his promotion.

On the 9th June, 1979, the Supreme Court issued its decision in the said recourse (111/77) and annulled the decision of the appropriate authority of February, 1977, and I shall revert later on regarding that recourse.

15 There is no doubt that from the facts appearing in the present recourse the first interested party Odysseas Lambrou joined the police force on 18th December, 1947 and was promoted to a Sergeant on the 1st January, 1956. On 1st June, 1958, he became Sub-inspector and Police Inspector B on 16th September,

20 1960. He was further promoted to Police Inspector on 1st July, 1968, and to Acting Senior Police Inspector on 15th September, 1974. On 1st January, 1977, he was promoted to Senior Police Inspector and on 6th July, 1978 to Acting Deputy Chief of Police. Finally, he was promoted to Deputy Chief of Police on 15th

25 March, 1979.

The second interested party Kypros Mourouzides was enlisted in the police force on 4th February, 1952. He was promoted to Sergeant on 1st June, 1958 and to Sub-Inspector on 1st April, 1971 and to Police Inspector B on 1st September, 1972. On

30 26th February, 1974, he was promoted to Acting Police Inspector and on 1st October, 1975, to Acting Senior Police Inspector. On the 1st January, 1977, he was promoted to Senior Police Inspector and on the 1st April, 1979, to Deputy Chief of Police.

The promotions of the interested parties were carried out in

35 accordance with s. 13 of the Police Force Cap. 285. In addition on 24th March, 1977, the first interested party Odysseas Lambrou was promoted to the post of Deputy Chief of Police and on 24th March, 1979, the appropriate organ promoted him to the

post of Deputy Chief of Police. The said interested party by a letter dated 27th March, 1979, accepted the said promotion.

On 24th March, 1979, the Minister of the Interior promoted to the post of Deputy Chief of Police in the police force the second interested party, i.e. Kypros Mourouzides as from 1st April, 1979, and by a letter dated 27th March, 1979, he accepted his promotion. 5

Finally, in the light of the aforesaid promotions of Odysseas Lambrou and Kypros Mourouzides, the applicant, by a letter dated 5th June, 1979, asked the Chief of Police to allow him to leave the service at the age of 55, and the Chief of Police by a letter dated 20th July, 1979, informed him that his application for retirement was accepted. 10

On 15th January, 1980, counsel for the respondents in the presence of Mr. G. Arestis, counsel for the applicant, made this statement: "I have discussed the case with Mr. Mourouzides but unfortunately he is ill today and having explained the whole matter to him he is requesting an adjournment of this case as he intends to engage a lawyer of his own choice. In these circumstances and I lay stress on the fact that he is ill, I apply that this adjournment should be granted. I have discussed this matter with my learned colleague Mr. Arestis, and he also agrees to the adjournment in the particular circumstance which appear because of the illness of Mr. Mourouzides." Then Mr. Arestis not raising an objection for the adjournment the case was adjourned to enable Mr. Mourouzides to engage the services of his own counsel. On 29th January, 1980, counsel on behalf of Mr. Mourouzides informed the Court that he needed a period of fifteen days to file the opposition and as there was no objection by Mr. Arestis the case was fixed for further directions on the 12th February, 1980. On that date once again the case had to be adjourned and Mr. Arestis, counsel for the applicant, made this statement: "I understand that no opposition has been filed in this case. As it is an urgent case and we made it clear to all concerned I apply for a date for hearing and the Registrar of this Court to see that the opposition will be filed in time." With that in mind the Court made it clear that the case would be fixed for hearing on the 10th April, 1980. In the meantime the Registrar had received instructions to inform counsel appearing for Mr. Mourouzides. Indeed, on the 10th 20 25 30 35 40

April, 1980, Mr. Chrysostomides, counsel for the interested party No. 2 made this statement: "Your Honour, I adopt the opposition filed on behalf of the Republic for the interested party Mr. Mourouzides." Then Mr. Arestis, counsel for the applicant, made this statement: "I have discussed the case with my learned colleagues and I understand that it is the wish of counsel for the Republic to see the appropriate authority with a view to finding an amicable solution to the problem which is before Your Honour, because in effect the Government will not incur any further expenses or any other obligations connected with the case of my client. His only wish in bringing the present recourse is to see that he will be getting a post personal to him without interfering with the rest of the promotions, and which will lapse on his retirement on the 1st May. Furthermore, I have been assured by my client that he has no desire to cause the Government any further expenses or any costs connected with his own position. I repeat, his only interest was that justice would have been done to him with regard to the position which he found himself earlier. I am assured by Mr. Kyprianou that he will do his best, because he also believes that in a case of this nature there is room for negotiations without the Government incurring expenses and to find a friendly solution to this problem." Then Mr. Kyprianou made this statement: "I think it is a proper case to be placed before the Minister of Interior to consider the whole matter in view of the statement of my learned friend, and I shall try my best to see the Minister as soon as possible". Mr. Chrysostomides did not raise any objection to the course suggested and the Court made this statement: "In view of the fact that counsel have taken this course, I have no difficulty in granting the adjournment. I would also add that I fully support this move, and in fact that was the reason why I had intervened to inform counsel appearing on behalf of the Republic that it was the proper and just solution so that none of the three parties appearing before this Court would be influenced in any way, either as regards the promotion or financially as in the case of the applicant. I am making this statement fully aware of its impact because the purpose of utilizing Article 146 of the Constitution - being a public law - is to see that justice is done to everybody." The case was fixed for further directions on the 17th April, 1980. On that date as nothing had materialized the hearing of the case was fixed on the 29th April, 1980.

Finally this case was argued very ably indeed by all counsel appearing before the Court and was concluded on the 28th June, 1980. For reasons which I think I need not disclose I have purposely delayed the issuing of this judgment in order to enable the Minister of the Interior to do justice to this unfortunate officer. But in any event there is no mystery about it once at that time Mr. Ioannou was on long leave and Mr. Mourouzides had not at that time recovered completely from his illness. With that in mind I would add that the applicant in accordance with the facts and circumstances of the present case as well as his whole career shows that he was one of the best officers in the police force and that he deserved to be treated in a better way by the Minister in question. The recommendation of the Chief of Police in my view shows clearly that at that time he was considered one of the best candidates and I think he was entitled to fill the post and to be promoted to the post of Deputy Chief of Police. Pausing here for a moment, I think I ought to make it quite clear once again that his whole career was jeopardized by a note which had fallen into the hands of the Minister in question and he had been victimized ever since. Indeed the applicant was forced to come before this Court earlier in order to find justice and in the case of *Ioannou and Another v. The Republic* (1979) 3 C.L.R. 423 at p. 446 according to the English version the applicant in 1977 was offered promotion to the post of Chief Superintendent in the police force. On the 4th January, 1977 the Director-General of the Ministry of Interior sent a letter to the first applicant which reads as follows:

“I have been directed to inform you that the Minister of Interior decided to offer you promotion to the post of Chief Superintendent in the Police Force as from 1st January, 1977. Your salary will be £2,674 per annum on the salary scale £2,518 x 98—£2,714 from 1st June, 1977. Furthermore cost of living allowance is payable according to the rate approved by the Government from time to time.

2. Your new incremental date will be the 1st of June.

3. Please let me know as soon as possible whether you accept this offer”.

The applicant having accepted the post in question thanked the Minister. On 8th February, 1977, the Director-General informed him that the Minister of the Interior has suspended his promotion until the examination of certain information
5 against him. The appellant feeling rightly aggrieved had sent a letter to the Minister expressing his disappointment and finally he said: "I would like to say that for dignity reasons and professional prestige - reasons sacred to me I shall be on leave (from that accumulated to my credit) until my honesty and my
10 professional dignity, as well as my rights are restored."

There is no doubt that the present applicant had been a victim in that case, and in dealing with the facts of the very same case, I had this to say at pp. 452, 453:

"I am, therefore, of the opinion that, when the Minister of
15 Interior decided to offer promotion to both applicants, and before acceptance of the promotion by the two applicants for the completion of the administrative act, only then the agreement between the administration and the applicants could have been revoked. If any other authority is needed
20 the case of *Panayides v. The Republic* (1972) 3 C.L.R. 467 in my opinion supports the above stand at p. 483, that even the omission to publish in the official Gazette is not an obstacle to the promotion once the legal effect of the promotion begins as from the date of its offer and its acceptance,
25 and therefore it cannot be freely revoked . . . See also *Tsavelas and another v. The Republic* (1975) 3 C.L.R. 490.

Furthermore it was stated that the fact that disciplinary proceedings against a public officer are pending without
30 any substantive criteria as regards the basis of the imputed accusations against him, they cannot also be taken into account for promotion purposes. It was further emphasized that once the accusations against the applicants insinuated that there was a breach of duty emanating from the
35 aforementioned acts or omissions, and once no disciplinary proceedings against him have been instituted, the Chief of Police who decided on the promotion could not have taken into account that fact because it was irrelevant under the circumstances."

Indeed counsel for the Republic Mr. Kyprianou fully aware of the facts of this case tried his very best and put forward that there were basic reasons which called for in favour of the promotion of the interested parties and not of the applicant because (a) of the necessity of filling immediately the vacant post in the interest of the service and the virtuous administration of the police force in the higher hierarchy: (b) the suspension of promotion of the applicant to a post of Inspector B for an indefinite period of time, as well as the fate of the Recourse No. 111/77; (c) the long absence of the applicant from service; and (d) the fact that during the period the applicant was holding the rank of Inspector A' and not that of Higher Inspector which is the immediate rank of the post of Assistant of the Chief of Police. Counsel further argued that the applicant by the letter dated 5th June, 1979, requested the appropriate authority to permit him to leave the force at the age of 55, and the Chief of Police by a letter dated 20th July, 1979, informed the applicant that his application for retirement was accepted. In spite of the fact that the applicant had asked to leave the service and permission was given to him, nevertheless, from the contents of his letter dated 5th June, 1979, made it clear, in my view, that he had reserved all his rights which he called as being earned rights, and at the same time made it further clear that he intended to pursue his rights which he was legally entitled to. There was no doubt at all that the applicant was feeling very distressed with the treatment attended to him but at the same time, and irrespective of the facts that he asked to retire from the police force, he made it clear to all concerned that he was reserving all these rights due to him, and at the same time he brought the present recourse in order to find justice in Court.

Having listened to the long and able arguments of all counsel appearing before me, I think I ought to deal with the most important question, as to whether once the applicant had asked to leave the service and permission was granted to him, he had lost his legitimate interest in bringing the present recourse. I have indeed given my best consideration to this important legal point and my answer is that in the particular circumstances of this applicant and particularly of the treatment afforded to him by the respondents, my answer without hesitation is in the affirmative. That I am right I find further support in the case of *Marios Christophides v. Cyprus Telecom-*

munications Authority (1979) 3 C.L.R. 99 where Mr. Justice A. Loizou had this to say on the issue of the legitimate interest at pp. 115, 116:

5 “In support of his first proposition, counsel for the
respondent Authority referred to the case of *Christofis*
v. The Republic (1979) 3 C.L.R., p. 97, where it was held
following the Greek caselaw on the matter, that the legiti-
10 mate interest required must exist both at the time of the
making of an act and at the time when its validity is
challenged and that as stated in Case No. 1823/56 of the
Greek Council of State, the legitimate interest must arise
out of a legal relationship of an applicant which is already
in existence when the act concerned is challenged.....

15 The presence of existing legitimate interest is essential
to the exercise of a right of recourse under Article 146.
The word ‘existing’ to be found in para. 2 of Article 146,
denotes according to the caselaw of this Court that it must
exist at the time of the filing and the hearing of a recourse,
20 and these requirements are satisfied also in cases where
at the material time it is clear that the existing interest
of an applicant, though not yet actually adversely and
directly affected, is unavoidably bound to be so affected
eventually. (See *Kyriacos Papasavvas v. The Republic*,
25 (1967) 3 C.L.R., p. 111. See also the Conclusions from
the Caselaw of the Greek Council of State 1929–1959,
p. 260 and Tsatsos Application for Annulment 3rd Edition
para. 16, pp. 48–49 where it is stated that there continues
to exist the detriment suffered by the act or omission when
30 the person affected lost subsequently the quality for which
the act or omission related to him without, on account
of this, the removal of the injury suffered). In support
of this proposition reference is made to a number of
decisions of the Greek Council of State.

35 In the case in hand, however, one need not go into the
matter beyond the fact that the pecuniary interest of the
applicant was and continued to be affected at the time of
the hearing of this recourse, since by the sub judice decision
he was adjudged to pay by way of fine half of his emolu-
ments for the period between the 19th June, 1976 to the

31st December 1976, and that this fine was collected by the respondent authority.

Moreover in the circumstances of this case the legitimate interest of the applicant has not been lost because of any acceptance of the sub judge decision. He resigned with reservation of his rights and made it clear that he intended to pursue his reinstatement to the post, he was, as he claimed, legally entitled to.

I cannot for a moment think that the applicant by his act of resignation consented to or accepted the sub judge decision. I find therefore that the applicant had an existing legitimate interest and therefore he satisfied the basic requirements of Article 146.2 of the Constitution and the present recourse can proceed. The case of *Piperis v. The Republic* (1967) 3 C.L.R. p. 295, suggests that there exists in our law the principle that the reservation of rights by a person affected by an administrative decision preserve his legitimate interest in the matter and render ineffective anything that might otherwise have been considered as an acceptance of the administrative act complained of".

In the light of these weighty pronouncements I have reached the conclusion that the applicant had an existing legitimate interest and certainly was entitled to complain and bring the present Recourse No. 227/79 as of right.

The next complaint of counsel for the applicant was that the respondents have acted contrary to the law and in abuse and/or in excess of their power without taking into consideration the superior qualifications and the experience of the applicant and indeed have failed to exercise their duty in choosing the best candidate. Having considered the argument of counsel and particularly because the applicant was strongly recommended by the Chief of Police at the time I have reached the conclusion that the applicant rightly complained. In the case of *Christodoulos Nissis v. The Republic* (1967) 3 C.L.R. 671 Triantafyllides J., as he then was, had this to say at p. 675:

"It has been argued by counsel for the Applicant that the issue of abuse of powers has been, all along, before the trial Court, and that the new ground raised on appeal is part, really, of such issue. We take the view that abuse

5 or excess of powers is a generic reason enabling a Court exercising revisional jurisdiction, under Article 146, to annul an administrative act or decision, but the existence of abuse of powers, or of excess of powers, of a particular nature has to be established to the satisfaction of the trial Court; and the onus always rests, in each case, on the Applicant”.

In the case of *Niki Christodoulidou-Katsiaouni v. The Republic* (1981) 3 C.L.R. 390 I had this to say at p. 397:

10 “For the reasons I have given, and in the special circumstances of this case, I have reached the conclusion, relying on ground 2 only, that the respondents acted in abuse of powers because they did not give to the applicant reasonable notice for settling her personal and family obligations”.

15 Still on the abuse of powers in *Loiziana Hotels Ltd., v. The Municipality of Famagusta* (1971) 3 C.L.R. 466 Mr. Justice A. Loizou had this to say at p. 474:

20 “The unreasonable delay by the respondent in determining the application of the applicant and their subsequent application of the law as it was on the 15th March, 1971, amounts, to my mind, to a misdirection as to the law applicable and in fact to an excess and abuse of power. The law applicable is the law as it was before the 29th January, 1971, under which it is common ground the permit
25 could be issued as a matter of course”.

In *George Pavlides and Others v. The Republic of Cyprus* (1978) 3 C.L.R. 331 I had this to say at p. 348:

30 “As I have shown earlier, in England, the position is different, and in my view, once the Act has expired, and it ceased to have any effect, it could not have been prolonged or extended by Law 22/77 by a mere amendment, but only by a re-enactment of the whole Act. In these circumstances, and as the two Cyprus cases quoted earlier are distinguishable, I find myself in agreement with counsel
35 for the applicants that as the law was dead, having expired, the assessments were wrongly made by the Commissioner, and the decision to impose special contribution on the applicants was made in excess or in abuse of powers vested in such organ and is hereby declared null and void and
40 of no effect whatsoever, once there was no valid law in force”.

For these reasons and because this case of the applicant was unique and because nobody has dealt with his case until that time I would uphold the argument, as I repeat, there was a long delay in dealing with the case of the applicant and the recourse succeeds on grounds 1 and 2. See also *Bagdades v. The Central Bank of Cyprus* (1973) 3 C.L.R. 417; *Demosthenous v. The Republic* (1973) 3 C.L.R. 354 which shows that the paramount duty in selecting candidates whether for appointment or promotion is to select the most suitable from among the qualified candidates; *Hadjigeorghiou v. The Republic* (1974) 3 C.L.R. 436; and *Kyriacou v. The Public Service Commission* (1974) 3 C.L.R. 358

Turning now to the third ground of law viz., that the respondents did not take into consideration the seniority of the applicant and/or his experience without putting forward sufficient reasons I would observe with respect to everyone that in this case the respondents after keeping silent for a long time indeed finally they went to appoint the two interested parties in violation of every principle of the law and the administrative law ignoring the seniority, the qualifications and the merits of the applicant.

Regretfully, I find myself in this difficulty and I have no alternative but to repeat that this case is the worst case which has come before the Courts and the applicant had not as yet received any explanation or indeed a written document making it quite clear whether or not the applicant was in any way in breach of duty.

The next question is whether the respondent had erred in not attaching importance to the seniority and/or qualifications and merits of the applicant.

In *Aristos Menelaou v. Republic*, (1969) 3 C.L.R. 36, Mr. Justice L. Loizou had this to say on the issue of seniority at p. 41:-

“Learned counsel for the Applicant, after citing to me section 44(2) of Law 33/67, submitted that in view of the fact that of the three criteria set out therein, on the basis of which promotions are determined, the Applicant was superior with regard to two i.e. seniority and qualifications, the decision should have been in his favour even if the Interested Party had slightly more merit. In my view,

in cases of promotion merit should carry the most weight; but, be that as it may, in this particular case, Applicant's qualifications and seniority were not, in my opinion such as to outweigh the Interested Party's superior merit or to reasonably lead one to the conclusion that the decision of the Public Service Commission was wrong.

In my view, having regard to all the circumstances of this case, it was perfectly open to the Commission, in the light of the material before them, to come to the decision to which they did and for this reason this Court would not be justified in annulling their decision".

In *Theocharous v. The Republic*, (1969) 3 C.L.R. 318, I had this to say at p. 322:-

"I would like, to repeat once again, that the object of paragraph 1 of Article 125, includes not only the safeguarding of the efficiency and proper functioning of the Public Service, but also the protection of the legitimate interest of the public officers. It has to be remembered, therefore, that the paramount duty of the Commission in effecting appointments or promotions, is to select the most suitable candidate for the particular post, having regard to the totality of circumstances pertaining to each one of the qualified candidates, including length of service, which though always a factor to be considered, is not always the exclusive vital criterion for such appointment or promotion; quite rightly so, because the functions of a public office should be performed in the general interest of the public by the public officer best suited to perform such duties, particularly because of his merits, as reflected by the confidential reports and the recommendations of the head of the department or of a senior officer.

In the light of all the material before me, and after going through the last two annual confidential reports of the parties, and in view of the fact that the Public Service Commission, in effecting the promotion of the Interested Parties, has relied mainly on the merits of the parties, as required by s.44 of the Public Service Law, and this being a matter of the exercise of their discretion, I have reached the conclusion that from the totality of all the circumstances before them, it was reasonably proper and

open to them to reach the conclusion to promote the Interested Parties in preference and instead of the Applicant, even though the applicant was more senior to Aristidou.

I would, therefore, reach the conclusion that the Applicant has failed to show to this Court that the Public Service Commission has exercised their discretion in disregard of the law or in excess or abuse of power. For these reasons, I have decided not to interfere with the decision of the Public Service Commission because, I repeat, it was reasonably open to them from the totality of the circumstances of this case to promote the Interested Parties, relying mainly on the merit of each Applicant, which in my view, should always carry more weight than seniority and qualifications".

In *Odyseas Georghiou v. The Republic*, (1975) 3 C.L.R. 153, Mr. Justice A. Loizou had this to say at p. 159-160:-

"In determining the merits of civil servants, the whole career of a candidate has to be examined and all the factors referring to his quality, ability and merits, as civil servant and not those for a certain period or of a certain category, have to be taken into consideration (see *Iosif Georghiadis and Another v. The Republic* (reported in this part at p. 143, ante)).

In that respect, the seniority of the interested party and length of service with the experience that goes with it, were factors to be taken into consideration, and on the totality of the material before the respondent Commission, it was, in my view, reasonably open to it to arrive at the sub judice decision.

It cannot be said that it acted in abuse or excess of power or in any way outside the extreme limits of its discretion".

For all these reasons I have reached the conclusion that this recourse succeeds and, therefore, the promotions of the two interested parties are hereby cancelled.

In the particular circumstances of this case I am not prepared to make an order for costs.

Recourse succeeds. No order as to costs.

Sub judice decision annulled. No order as to costs.