

1983 February 14

[TRIANTAFYLIDIS, P., L. LOIZOU, HADJIANASTASSIOU, SAVVIDES, JJ.]

ANNA PIPERI AND OTHERS,

*Appellants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,*Respondent.*

(Revisional Jurisdiction Appeals Nos. 231, 232).

*Public Officers—Promotions—“Experience” and “ability” of the candidates—Are considerations coming within the wider ambit of the factor of merit and had to be taken into account by the Commission—Though seniority was not directly referred to in the relevant minutes, the Commission relied on the “experience” of the candidates and had before it the personal files and the annual confidential reports files of the candidates—It can be safely concluded that factor of seniority was never lost sight of—Not necessary to mention specifically each candidate in the minutes—Seniority prevails if all other factors are equal—Reasonably open to the Commission, on the totality of the material before it and in the exercise of its relevant discretionary powers, to select the interested parties.* 5

*Public officers—Promotions—Head of Department—Recommendations of—Section 44(3) of the Public Service Law, 1967 (Law 33/67)—Substantial compliance with provisions of, depends, to a certain extent, on the circumstances of each particular situation—No head of Department in the department concerned—And Director-General of the Ministry who could act as Head of Department absent abroad—Head of the section in the Department where the vacancies existed orally authorised by Director-General to represent him at the relevant meeting of the Commission—Substantial compliance with above section 44(3) in the particular circumstances.* 15

The above appeals were directed against a first instance judgment by means of which appellants' recourses against the promo- 25

tion of one of the interested parties and against the secondment of the other interested parties to the post of Labour Officer, 2nd Grade were dismissed.

Counsel for the appellants mainly contended:

- 5 (a) That in selecting the interested parties, instead of the appellants, the respondent Commission wrongly relied on, *inter alia*, the criteria of "experience" and "abilities", which are mentioned in its relevant minutes.
- 10 (b) That the seniority of the appellants over the interested parties in the post of Assistant Labour Officer, which is the post immediately lower to the post of Labour Officer, 2nd Grade, was disregarded by the respondent Commission erroneously and without giving any cogent reason for doing so.
- 15 (c) That there has not been made by the Commission the necessary comparison of all the candidates with each other and, in particular, of the appellants with the interested parties.
- 20 (d) That section 44(3) of the Public Service Law, 1967 (Law 33/67), was contravened in that at the relevant meetings of the respondent Commission there was present, instead of the Director-General of the Ministry of Labour and Social Insurance, the Senior Employment Officer at such Ministry.

25 Regarding issue (d) above, at the material time there did not exist a Head of Department of the Labour Department; and as the Director-General of the Ministry who could have acted, in view of his status in the hierarchy of the service, as the Head of Department of the Labour Department, was absent abroad,

30 he authorised orally the Senior Employment Officer, who was the Head of the Section in the Department of Labour where the vacancies in question had arisen, to represent him at the relevant meetings of the Commission for the purposes of section 44(3) of Law 33/67. Actually the Senior Employment Officer

35 had direct knowledge of the merits of the candidates who were in the service at the material time.

*Held*, (1) that the criteria of "experience" and "abilities" are considerations coming within the wider ambit of the factor

of "merit" which had to be taken into account by the Commission and which, as it is expressly stated in the minutes of the Commission was actually taken into account; and that, therefore, the respondent correctly relied on the above criteria.

*Held*, further, that though in the relevant minutes seniority is not directly referred to when the Commission relied on the "experience" of the candidates—which was, naturally and inextricably, connected with the length of their service—it had, also, before it the personal files and the annual confidential reports files of all the candidates who were already in the public service and, consequently, it can be concluded safely that the factor of seniority was never lost sight of by the Commission even if it did not expressly mention it in its relevant minutes (see, also, *Ierides v. The Republic* (1980) 3 C.L.R. 165, 179). 5 10

(2) That seniority prevails, as a criterion for selection of one candidate instead of another, if in all other respects the two candidates concerned are equal; that it was reasonably open to the respondent Commission, on the totality of the material before it, and in the exercise of its relevant discretionary powers, with which this Court finds no sufficient cause to interfere, to select, as being the most suitable, the interested parties, instead of the appellants, notwithstanding the seniority of the appellants. 15 20

(3) That it is obvious from the contents of the relevant minutes that all the candidates were considered and it was not, in any event, necessary to mention specifically each candidate in the minutes, because in the absence of any indication that any candidate has been excluded from consideration it has to be presumed that all of them were duly considered. 25

(4) That the mode of substantial compliance with the provisions of subsection (3) of section 44 of Law 33/67, as regards the recommendations to be made by the Head of Department concerned, is a matter which depends, to a certain extent, on the circumstances of each particular situation in relation to which the relevant provisions of the said subsection (3) are applied; that in the particular circumstances of the present cases there has been substantial compliance with section 44(3) in a manner compatible with its provisions and there has not occurred, in this respect, any illegality or material irregularity which vitiates the relevant administrative action leading up to the selection of the interested parties (p. 1313 post). 30 35 40

*Appeals dismissed.*

## Cases referred to:

*Ierides v. Republic* (1980) 3 C.L.R. 165 at p. 179;

*Andreou v. Republic* (1979) 3 C.L.R. 379 at p. 387;

5 *Ioannou v. Electricity Authority of Cyprus* (1981) 3 C.L.R.  
280 at pp. 303, 304;

*Tapakoudis v. Republic* (1981) 3 C.L.R. 9 at pp. 12, 13;

*Constantinou v. Public Service Commission* (1980) 3 C.L.R. 551  
at p. 561;

*Michanicos v. Republic* (1976) 3 C.L.R. 237 at p. 244;

10 *Georghiades v. Republic* (1970) 3 C.L.R. 257 at pp. 265, 266

*Duncan v. Republic* (1977) 3 C.L.R. 153 at p. 164;

*Nicolaou v. Republic* (1981) 3 C.L.R. 73 at p. 83.

## Appeals.

15 Appeals against the judgment of a Judge of the Supreme Court of Cyprus (A. Loizou, J.) given on the 11th August 1980 (Revisional Jurisdiction Case Nos. 75/79 and 83/79) whereby the appellants' recourses against the promotion of the interested parties to the post of Labour Officer, 2nd Grade were dismissed.

20 *L. Papaphilippou* with *Ph. Valiantis*, for the appellant in R.A. 231.

*L.N. Clerides*, for the appellant in R.A. 232.

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

25 *Cur. adv. vul.*

30 TRIANTAFYLIDIS P. read the following judgment of the Court: The appellants have appealed against the first instance judgment of a Judge of this Court by means of which there were dismissed their recourses against the promotion of one of the interested parties and against the secondment of the other interested parties to the post of Labour Officer, 2nd Grade.

\* Reported in (1980) 3 C.L.R. 377.

Counsel for the appellants have argued that the respondent Commission has, in selecting the interested parties instead of the appellants, wrongly relied on, inter alia, the criteria of "experience" and "abilities", which are mentioned in its relevant minutes.

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We cannot accept as correct the above argument because in our view the criteria of "experience" and "abilities" are considerations coming within the wider ambit of the factor of "merit" which had to be taken into account by the Commission and which, as it is expressly stated in its said minutes, was actually taken into account.

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It is true that in such minutes "seniority" is not directly referred to. But when the respondent Commission relied on the "experience" of the candidates—which was, naturally and inextricably, connected with the length of their service—it had, also, before it the personal files and the annual confidential reports files of all the candidates who were already in the public service and, consequently, we can conclude safely that the factor of seniority was never lost sight of by the Commission even if it did not expressly mention it in its relevant minutes. It is pertinent to refer, in this respect, to the following passage from *Ierides v. The Republic*, (1980) 3 C.L.R. 165, 179:

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"It is convenient to mention, at this stage, that counsel for the appellant has complained that, though the respondent Commission has referred in its minutes to the factor of 'experience', it makes no reference to the factor of 'seniority'; and he has argued that because of the omission to refer, expressly, to seniority it should be concluded that no due weight was given to this factor though it is one of the three cardinal factors which, together with merits and qualifications, had to be taken into account.

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There is, indeed, no express reference to seniority in the relevant minutes of the Commission, but it is stated, however, therein that 'all facts appertaining to each one of the candidates' were taken into consideration and, also, that 'the Personal Files and the Annual Confidential Reports of the candidates already in the service were also taken into consideration'.

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There can be no doubt, especially in view of the presumption of regularity which is applicable in relation to administrative actions (see, inter alia, *The Republic v. Ekkeshis*, (1975) 3 C.L.R. 548, 556), that the seniority of all the candidates, including, of course, the appellant and the interested party, as appearing in their personal files, was taken into consideration in reaching the sub judice decision (and see, also, the decision of the Council of State in Greece in case 1341/1963, which is reported in *Επιθεώρησης Δημοσίου Δικαίου και Διοικητικού Δικαίου—Review of Public Law and Administrative Law—1963*, vol. 7, pp. 403, 404). Moreover, the notion of ‘experience’ must, reasonably, be taken to include that of ‘seniority’ ”.

Counsel for the appellants have, furthermore, contended that the seniority of the appellants over the interested parties in the post of Assistant Labour Officer, which is the post immediately lower to the post of Labour Officer, 2nd Grade, was disregarded by the respondent Commission erroneously and without giving any cogent reason for doing so.

It was the duty of the Commission to select the most suitable candidates (see, inter alia, *Andreou v. The Republic*, (1979) 3 C.L.R. 379, 387 and *Ioannou v. The Electricity Authority of Cyprus*, (1981) 3 C.L.R. 280, 304).

It is, moreover, well settled that seniority prevails, as a criterion for selection of one candidate instead of another, if in all other respects the two candidates concerned are equal (see, inter alia, *Tapacoudis v. The Republic*, (1981) 3 C.L.R. 9, 12, 13 and *Ioannou*, supra, 303).

In the present instance it was reasonably open to the respondent Commission, on the totality of the material before it, and in the exercise of its relevant discretionary powers, with which we find no sufficient cause to interfere, to select, as being the most suitable, the interested parties, instead of the appellants, notwithstanding the seniority of the appellants (see, inter alia, *Constantinou v. The Public Service Commission*, (1980) 3 C.L.R. 551, 561).

It has been submitted, also, by counsel for the appellants that there has not been made by the Commission the necessary

comparison of all the candidates with each other and, in particular, of the appellants with the interested parties. A perusal of the relevant minutes of the Commission does not bear out as well-founded this submission of counsel for the appellants. It is obvious from the contents of such minutes that all the candidates were considered and it was not, in any event, necessary to mention specifically each candidate in the minutes, because in the absence of any indication that any candidate has been excluded from consideration it has to be presumed that all of them were duly considered (see, inter alia, *Michanicos The Republic*, (1976) 3 C.L.R. 237, 244).

The next issue with which we have to deal with in these appeals is the contention of the appellants that, allegedly, section 44(3) of the Public Service Law, 1967 (Law 33/67), was contravened in that at the relevant meetings of the respondent Commission there was present, instead of the Director-General of the Ministry of Labour and Social Insurance, Mr. M. Sparsis, the Senior Employment Officer at such Ministry, Mr. A. Prototipas.

The said section 44(3) reads as follows: 20

“  
 (3) In making a promotion, the Commission shall have due regard to the annual confidential reports on the candidates and to the recommendations made in this respect by the Head of Department in which the vacancy exists. 25  
 ”

The expression “Head of Department” in subsection (3) section 44, above, is defined in section 2 of Law 33/67 as meaning “the Officer in charge of a Department”; and it is clear that a Head of Department is a notion which does not always coincide with that of the “appropriate authority” which also, defined in the said section 2. 30

It appears on the basis of relevant case-law that the mode of substantial compliance with the provisions of subsection (3) section 44 of Law 33/67, as regards the recommendations to be made by the Head of Department concerned, is a matter which depends, to a certain extent, on the circumstances of the particular situation in relation to which the relevant provi- 35

sions of the said subsection (3) are applied (see, inter alia, *Georgiades v. The Republic*, (1970) 3 C.L.R. 257, 265, 266, *Duncan v. The Republic*, (1977) 3 C.L.R. 152, 164, and *Nicolaou v. The Republic*, (1981) 3 C.L.R. 73, 83).

5 We do not intend to deal exhaustively, on the present occasion,  
with the correct construction and application of the relevant  
provisions in section 44(3) of Law 33/67, since we have reached  
the conclusion that in the particular circumstances of the present  
10 44(3) in a manner compatible with its provisions. In forming  
this view we have taken into account the following: It is  
common ground that at the material time there did not exist  
a Head of Department of the Labour Department, which is  
one of the three Departments of the Ministry of Labour and  
15 Social Insurance. As the Director-General of the Ministry  
who could have acted, in view of his status in the hierarchy of  
the service, as the Head of Department of the Labour Depart-  
ment, was absent abroad, he authorized the Senior Employment  
20 of Labour where the vacancies in question had arisen, to re-  
present him at the relevant meetings of the Commission for  
the purposes of section 44(3) of Law 33/67; and, in our opinion,  
it was not necessary for such authorization to be given in writing.  
Actually, the Senior Employment Officer had direct knowledge  
25 of the merits of the candidates who were in the service at the  
material time and had the Director-General been able to attend  
personally the meetings of the Commission he would have had  
to consult the Senior Employment Officer about the merits  
of such candidates before making his own recommendations.  
30 Thus, in substance, the recommendations which were made  
to the respondent Commission on this particular occasion by  
the Senior Employment Officer, when representing the Director-  
General of the Ministry, were the recommendations that the  
Head of Department of Labour, if there had been one at the  
35 material time, would have made, or which the Director-General  
of the Ministry, acting as the Head of Department of the Labour  
Department, had he been present, would have made. We  
therefore, cannot agree that there has occurred, in this respect,  
40 any illegality or material irregularity which vitiates the relevant  
administrative action leading up to the selection of the inter-  
ested parties.



For all the foregoing reasons we find that the recourses of the appellants were rightly dismissed by the learned trial Judge and that these appeals fail and should be accordingly dismissed. We will not, however, make any order as to their costs.

*Appeals dismissed with no order 5  
as to costs.*