

1984 December 17

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CONSTANTINOS NEOPHYTOU,

Applicant.

v.

THE PUBLIC SERVICE COMMISSION,

Respondents.

(Case No. 235/84).

Public Officers—Promotions—Schemes of service—Interpretation—Principles applicable—Requirement of “5 years service in the post of Assistant Veterinary Officer” in the scheme of service for the post of Veterinary Officer ‘A’—Reasonably open to the respondent to construe such scheme as requiring 5 years service in the above post and not experience of a kind normally acquired by an Assistant Veterinary Officer.

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The applicant, an Assistant Veterinary Officer, was a candidate for promotion to the post of Veterinary Officer A. The required qualifications for promotion, under the relevant scheme of service, were “at least five years service in the position of Veterinary Officer/Assistant Veterinary Officer”. Applicant had served for less than five years in the post of Assistant Veterinary Officer but between 15.11.1976 and 16.10.1978, whilst holding the substantive post of Clerical Assistant, he discharged on secondment the duties of an Assistant Veterinary Officer. The Public Service Commission ruled that he was ineligible for promotion because he lacked the above qualification; hence this recourse.

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Held, after setting out the principles governing interpretation of schemes of service—vide pp. 1468–1469 post, that the interpretation attached to the scheme of service by the respondents was plainly open to them; that not only it was open to them but it was

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inescapable on a grammatical construction of its provisions; that what was postulated, was service in a particular post and not experience of any kind; that the construction placed upon the scheme by the Public Service Commission was also consonant with the objects of the scheme intended to lay down the pre-requisites for promotion, permissible under s.30(1)(c) of the Public Service Law, 1967 (Law 33/67) only from one grade to the one immediately above; that if the argument of Counsel for the applicant were upheld, the scheme of service would have to be read as requiring—

(a) holding the post of Assistant Veterinary Officer and, (b) experience of a kind normally acquired by an Assistant Veterinary Officer in the Government Service, a construction wholly incompatible with the provisions of the scheme; accordingly the recourse must fail.

Application dismissed.

Case referred to:

- Pankyprios Syntechnia Dimosion Ypallilon v. Republic* (1978) 3 C.L.R. 27;
- Vakis v. Republic* (1984) 3 C.L.R. 952;
- Skouridou v. Republic* (1984) 3 C.L.R. 1081;
- Der Parthogh v. C.B.C.* (1984) 3 C.L.R. 635;
- Republic v. Aivaliotis* (1971) 3 C.L.R. 71;
- Papapetrou v. Republic*, 2 R.S.C.C. 61 at p. 69.

25 **Recourse.**

Recourse against the decision of the the respondent to promote the interested party to the post of Veterinary Officer A in preference and instead of the applicant.

- N. Papaefstathiou for T. Papadopoulos*, for the applicant.
- 30 *A. Vladimirov*, for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. I am in agreement with counsel that only one issue calls for consideration: The eligi-

bility of applicant for appointment to the post of Veterinary Officer A'. If eligible, the sub judice decision must necessarily be annulled, as counsel acknowledged, for misconception of material facts, that is, the facts relevant to the eligibility of the applicant for promotion, and misinterpretation of the relevant clause of the scheme of service. 5

It is appropriate to praise the effort made to confine the issues meriting consideration, a course invariably conducive to the good administration of justice. It helps the Court concentrate on the substantive issues, it is time saving and, generally contributes to the speedy administration of justice. 10

The Public Service Commission construed the clause of the scheme of service defining qualifications for promotion, as requiring five years service in the post of Veterinary Officer or Assistant Veterinary Officer, and thus ruled applicant to be ineligible because he admittedly lacked the above qualification. Applicant had served for less than five years in the post of Asst. Veterinary Officer and his name was, on account of that consideration, deleted from the list of candidates eligible for promotion. It is the case of the applicant, the decision is wrong because it rests on an erroneous interpretation of the scheme of service and ultimate misappreciation of his qualifications. Allegedly, he satisfied the relevant qualifications requirements by having served on special assignment in the Veterinary Department for an additional period of nearly two years, between 15.11.1976 and 16.10.1978 notwithstanding the fact he held, at the time, the substantive post of Clerical Assistant. It is a fact that between the aforementioned dates he discharged on secondment the duties of an Asst. Vet. Officer. Upon proper appreciation of the facts, the question is reduced to one of interpretation of the scheme of service, in particular, the expression set out in para. (1) of the required qualifications "Πενταετής τουλάχιστον υπηρεσία εις την θέσιν Κτηνιατρικού Λειτουργού/Βοηθού Κτηνιατρικού Λειτουργού _____" 15 20 25 30

(At least five years service in the position of Veterinary Officer/ Assistant Veterinary Officer _____). 35

* Now reported in (1984) 3 C.L.R. 1081.

Although schemes of service are legislative instruments¹, the construction and interpretation of their provisions is not subject to the canons of construction of legislation. I had occasion to dwell on this subject and explain the differences
5 in *Der Parthogh v. C.B.C.* (1984) 3 C.L.R. 635. Unlike ordinary enactments, a scheme of service is legislation of very limited ambit, directed to the satisfaction of specific administrative needs. Its application is interwoven with the appreciation and proper satisfaction of those needs by the competent administrative organ, in this case the Public Service Commission.
10 For that reason, their interpretation is not a pure question of law but a matter of exercise of discretionary powers within the framework of the scheme of service. The provisions of the scheme of service define the limits of the discretion. Within
15 those limits, the Public Service Commission may construe them in any manner reasonably open to it. In fact, their interpretation need not necessarily be the most obvious one or, indeed, the one favoured by the Court². The test is whether it transgresses the limits set by the wording of the law as indicated by the Full Bench of the Supreme Court, in *Republic*
20 *v. Alexandros Aivaliotis* (1971) 3 C.L.R. 71³. Applying this test for the determination of the legality of the sub judge decision, the answer is, in my judgment, that the interpretation attached to the scheme of service by the respondents was plainly
25 open to them. Not only it was open but, in my view, it was inescapable on a grammatical construction of its provisions. What was postulated, was service in a particular post and not experience of any kind. The construction placed upon the scheme by the Public Service Commission was also consonant
30 with the objects of the scheme intended to lay down the prerequisites for promotion, permissible under s.30(1)(c) of the Public Service Law⁴, only from one grade to the one immediately above. The pertinent provision of the scheme, here under consideration, was designed to fashion the qualifications for
35 promotion to the above reality, coupled with a stipulation that only service of a certain duration—five years—would give a

1 See, *Pankyprios Syntechnia Dimosion Ypallilon v. The Republic* (1978) 3 C.L.R. 27; *Vakis v. The Republic* (1984) 3 C.L.R. 952; *Skouridou v. The Republic*, delivered on 5.10.1984 (not yet reported)*.

2 See, *Der Parthogh*, supra, p. 639.

3 See, also, *Papapetrou And The Republic*, 2 R.S.C.C., 61, 69.

4 Law 33/67.

right to promotion. If the argument of counsel for applicant were upheld, the scheme of service would have to be read as requiring—

(a) holding the post of Assistant Veterinary Officer and,

(b) experience of a kind normally acquired by an Assistant Veterinary Officer in the government service. 5

A construction wholly incompatible with the provisions of the scheme.

The recourse fails. It is dismissed accordingly. Let there be no order as to costs. 10

Recourse dismissed with no order as to costs.