

1984 December 24

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS KAZAMIAS AND OTHERS,

*Applicants.*

v.

THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Cases Nos. 136/84, 137/84, 212/84).

*Public Officers—Promotions—Head of Department—Recommendations—Whether he must have personal knowledge of the performance of the candidates—Recommendation cannot be confined, as regards time limits, to the year of the last confidential reports, but to the period up to the moment they are made—Section 4A(3) of the Public Service Law, 1967 (Law 33/67)—Schemes of Service demanding qualifications of, inter alia, organizing and administrative ability—Such qualifications being matters in respect of which officers are reported upon in their confidential reports not necessary for respondent Commission to have carried out a due inquiry as to whether the candidates satisfied above requirement of scheme of service.*

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*Public Officers—Promotions—Departmental Boards established under section 36 of the Public Service Law, 1967 (Law 33/67)—Under no duty to recommend four candidates for each post—Proviso to regulation 6 of the Regulatory Orders governing establishment of Departmental Boards.*

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The applicants were candidates for promotion to the post of Senior Surveyor (Surveys) in the Department of Lands and Surveys. The Head of Department, who participated at the relevant meeting of the Commission, which took place on 22.12.1983, stated before the Commission that though applicants

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Kazamias and HjiGeorghiou, were ahead of the interested parties in seniority the former were inferior in merit. He, also, made an evaluation of the performance of the candidates during 1983 and according to such evaluation the interested parties had better performance than the applicants; and went on to recommend the interested parties for promotion. The respondent Public Service Commission, after taking into consideration the recommendation of the Departmental Board and that of the Head of Department along with the contents of the personal files and the confidential reports on the candidates, decided to promote the interested parties and hence this recourse.

Counsel for the applicants mainly contended:

- (a) That the respondent Commission did not carry out a due inquiry as to whether the candidates satisfied the relevant scheme of service and in particular with regard to the qualification of organizing and administrative ability, responsibility, initiative and judgment.
- (b) That the Director of the Department of Lands and Surveys was never the reporting or countersigning officer of the applicants nor could he himself evaluate their performance during the year 1983 as he was not their immediate superior officer and he had no personal knowledge of their performance at work which by its very nature takes them away from the office.
- (c) That it was improper for the Head of Department to make an evaluation of the candidates for 1983 and for the respondent Commission to take same into consideration as there had been submitted by then the confidential reports for the applicants in respect of the year 1983.
- (d) That in not recommending for promotion applicant Sammoutis the Departmental Board acted in violation of regulation 6\* of the Regulatory Orders governing the establishment, competence and the method of operation of Departmental Boards, inasmuch as the Departmental Board recommended only four candi-

\* Regulatory Order 6 provides, inter alia, in its proviso that "no less than two and no more than four must be recommended for every vacant post so long as, there exist suitable persons for such recommendation".

dates, whereas it could recommend up to eight, as long as there were suitable persons for such recommendation.

*Held*, (1) that the qualifications of organizing and administrative ability, responsibility, initiative and judgment which are demanded by the schemes of service are matters in respect of which officers are reported upon in their confidential reports and it is wrong to say that the respondent Commission did not have the necessary material before it in order to arrive at the conclusion that the candidates, both the applicants and the interested parties, possessed these qualifications; accordingly contention (a) must fail. 5 10

(2) That the extent of the knowledge of the Head of the Department about his subordinates is a matter which depends on the facts of each case and unless there is anything establishing to the contrary, a Head of the Department, who chairs a Departmental Board and is invited by the respondent Commission to make recommendations as regards the candidates and their suitability for promotion, must be presumed to have made the necessary inquiry and to have informed himself about them; that in the present case this Head of Department was also the Chairman of the Departmental Board which made a thorough analysis of the merits, qualifications and career including the seniority of the candidates; accordingly contention (b) must fail. 15 20 25

(3) That the respondent Commission has to be informed of the merits of candidates as they stand on the day it examines the matter, that is, the day it hears the recommendations of the Head of the Department and not stop, as in this case would have been, almost a year back; and that, furthermore, from the wording of section 44(3) of the Public Service Law, 1967 (Law 33/67) it is clear that the recommendation cannot be confined as regards time limits to the year of the last confidential report submitted, but to the period up to the moment such recommendation is made; accordingly contention (c) must fail. 30 35

(4) That the proviso to regulation 6 does not cast a duty on a Departmental Board to recommend four candidates for each post and it cannot be said that in the circumstances of this case there has been any violation of this regulation or of any

principle of law on account of the recommendation made by the said Board which gave its views in its report on the matter; accordingly contention (d) must fail.

*Application dismissed.*

5 Cases referred to:

*Christou and Others v. Republic*, 4 R.S.C.C. 1 at pp. 5, 6.

#### Recourses.

10 Recourses against the decision of the respondent to promote the interested parties to the post of Senior Surveyor (Surveys) in the Department of Lands and Surveys in preference and instead of the applicants.

*N. Papaefstathiou for T. Papadopoulos*, for applicants in Case Nos. 136/84 and 137/84.

*Ch. Ierides*, for applicant in Case No. 212/84.

15 *A. Vladimirov*, for the respondent.

*E. Demosthenous*, for interested party *S. Petrou*.

*N. Stylianidou (Miss) for E. Efsthathiou*, for interested party *I. Lakerides*.

*Cur. adv. vult.*

20 A. LOIZOU J. read the following judgment. By the present recourses, the applicants seek a declaration of the Court that the decision of the respondent Commission published in the Official Gazette of the Republic of the 17th February, 1984, by which Simos Petrou and Iacovos Ch. Lakerides (hereinafter  
25 to be referred to as the interested parties), were promoted as from the 1st January, 1984, to the post of Senior Surveyor (Surveys) in the Department of Lands and Surveys, is null and void and of no effect whatsoever.

30 The said post is a promotion post and the respondent Commission, having in mind Order 3 of the Regulatory Orders that govern the establishment, competence and the method of operation of Departmental Boards made under the provisions of section 36 of the Public Service Law, 1967, caused a list of the candidates for promotion together with their personal files  
35 and confidential reports and the relevant scheme of service

to be sent to the Chairman of the Departmental Board which was set up to examine and advise it on the promotion in question. The Chairman of the said Board by letters dated 19.8.1983 and 2.9.1983 submitted its report (Appendix 4) in which there were recommended, in alphabetical order, four candidates for selection for promotion out of a list of twenty seven candidates that were holding the immediately lower post and who were entitled to be considered as candidates. Among the four candidates so recommended were applicant Andreas Kazamias (Recourse No. 136/84), and applicant Georghios HadjiGeorghiou (Recourse No. 137/84), but not applicant Charalambos Sammoutis (Recourse No. 212/84). The other two candidates recommended by the Departmental Board were the interested parties Simos Petrou and Iacovos Lakerides. In the report of the Departmental Board there had been made a grading of the merits of the candidates on the basis of the annual confidential report on them.

The respondent Commission, at its meeting of the 22nd December, 1983, decided to promote the two interested parties as being the most suitable for the post.

The relevant minute of this meeting of the respondent Commission, in so far as relevant, reads as follows:

“Reference to item 4 of the minutes of the meeting of the Commission dated 18.6.1982 and item 9 of the minutes of the meeting of the Commission dated 29.11.1983. At the meeting present was the Director of the Department of Lands and Surveys Mr. Roys Nicolaides. He mentioned the following:

Andreas Kazamias and Georghios Hadjigeorghiou are ahead of Simos Petrou and Iacovos Lakerides in seniority as regards the previous post, but the first two are inferior in merit in comparison to the other two. Taking into consideration establishment criteria in their totality, Petrou and Lakerides are recommended as more suitable for promotion, who during this year have a better performance than last year.

The performance of the candidates during 1983 is:

1. Kazamias — a little better than last year.

2. Hadjigeorghiou — a little better than last year.
3. Petrou — Excellent.
4. Lakerides — Excellent.

5 At this point the Director withdrew from the meeting. Thereafter, the Commission engaged in the evaluation and comparison of the candidates.

10 The Commission examined the material elements from the file regarding the filling of the post, as well as the personal files and the confidential reports on the candidates, and took into consideration the recommendations of the Departmental Board and the recommendations of the Director of the Department of Lands and Surveys.

15 The Commission after taking into consideration all the elements before it, came to the conclusion that Iacovos Lakerides and Simos Petrou who were recommended by the Director, are in essence superior to the other candidates on the basis of the establishment criteria (merit, qualifications, seniority) and decided to promote them to the post”.

20 It is the case for applicants Kazamias and Hadjigeorghiou that the respondent Commission acted under a misconception of fact in accepting the evaluation of the Departmental Board as regards the candidates as graded in the Appendix attached to its report and placed before the respondent Commission, 25 inasmuch as the grading of the various candidates and in particular that of the two applicants vis-a-vis the interested parties was not accurate. Furthermore, same was accepted without the respondent Commission itself carrying out any inquiry at all or a due inquiry on the subject.

30 The second ground upon which these two applicants challenge the sub judice decision is that the respondent Commission did not carry out a due inquiry as to whether the candidates satisfied the relevant scheme of service and in particular with regard to the qualification of organizing and administrative ability, 35 responsibility, initiative and judgment. In fact, there does not appear which factors the respondent Commission had in mind that they were possessed by the interested parties.

This latter ground may be briefly disposed of by pointing out that these qualifications demanded by the schemes of service

are matters in respect of which officers are reported upon in their confidential reports and it is wrong to say that the respondent Commission did not have the necessary material before it in order to arrive at the conclusion that the candidates, both the applicants and the interested parties, possessed these qualifications. 5

It was further argued on behalf of these two applicants that the Director of the Department of Lands and Surveys was never their reporting or countersigning officer nor could he himself evaluate their performance during the year 1983 as he was not their immediate superior officer and he had no personal knowledge of their performance at work which by its very nature takes them away from the office. In support of this proposition reference has been made to the case of *Christou & Others v. The Republic*, 4 R.S.C.C., p. 1, at pp. 5 and 6, where it was stated that in that case it could not be really said that the recommendation of the Head of the Department could have had any considerable effect because the Head of Department could only recommend and did recommend the applicants whom he knew without being in a position to state anything about the suitability of the great number of the other candidates whom he did not know at all. Whatever the strength of that proposition, it cannot be automatically applied to each case, inasmuch as the extent of the knowledge of the Head of the Department about his subordinates is a matter which depends on the facts of each case and unless there is anything establishing to the contrary, a Head of the Department, who chairs a Departmental Board and is invited by the respondent Commission to make recommendations as regards the candidates and their suitability for promotion, must be presumed to have made the necessary inquiry and to have informed himself about them. In the present case this Head of Department was also the Chairman of the Departmental Board which made a thorough analysis of the merits, qualifications and career, including the seniority of the candidates. This ground, therefore, cannot also succeed. 10  
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Before I deal with the first ground earlier referred to in this judgment, it is useful to refer to certain aspects of the parties' career and the contents of the confidential reports on them.

Applicant Kazamias entered the service on the 1st July, 1954, as a temporary Surveyor 2nd Grade and he became permanent on the 1st January, 1955. 40

On the 1st August, 1973 he was seconded to the Temporary Development Post of Surveyor First Grade and he was made permanent on the 15th November, 1978.

5 Applicant HadjiGeorghiou joined the service on the 16th August, 1955, as a permanent Surveyor, 2nd Grade, and he was seconded to the Temporary Development Post as Surveyor 1st Grade on the 1st August, 1973, and became permanent in that post on the 15th November, 1978.

10 Applicant Samoutis was first appointed as Surveyor 2nd Grade on the 1st December, 1966 (unestablished) and became permanent in that post on the 1st February, 1969. On the 1st August, 1973, he was seconded to the post of Surveyor 1st Grade and became permanent to the Development Post on the 1st June, 1977. He was promoted then to the permanent ordinary post of Surveyor 1st Grade on the 15th May, 1979.

20 Interested party Simos Petrou entered the service on the 1st November, 1963, as temporary Surveyor 2nd Grade. He became permanent on the 1st February, 1969, seconded to the Temporary Development post on the 1st August, 1973, and became permanent on the 15th November, 1978.

The Departmental Board whose report together with the appended documents and a letter of its Chairman as Appendix 4, graded applicant Kazamias as "little better than good", applicant HadjiGeorghiou "little better than good", applicant Samoutis "very good", interested parties Simos Petrou "very good" and Lakerides as "very good".

30 This is the grading as to their merits on the basis of the confidential reports on them. I do not intend and it will serve no purpose to reproduce here the yearly grading of the candidates, but I shall give only their average. As far as the confidential report of the year 1982 is concerned, applicant Kazamias is rated as "very good", and for the years 1981, 1980 and 1979 as "good".

35 Applicant HadjiGeorghiou for the year 1982 is rated as "very good", and for the years 1981, 1980 and 1979 as "good".

Applicant Samoutis for the years 1982 and 1981 is rated as "very good", for the year 1980 "good" and for the year 1979 as "very good".



Interested party Simos Petrou is rated for the years 1982 and 1981 as "very good", and for the years 1980 and 1979 as "good". Interested party Lakerides is rated for the years 1982, 1981 as "very good", for the year 1980 as "good", and for the year 1979 as "very good".

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In addition to the above, the Head of the Department informed the respondent Commission about the performance of all the parties during 1983. That was done, as already seen from the relevant minute, at the meeting of the respondent Commission of the 22nd December of that year and he rated applicant Kazamias as "little better than the previous year", applicant HadjiGeorghiou "a little better than the previous year", and interested parties Petrou and Lakerides as "excellent". With regard to this part of the recommendations of the Head of the Department, an argument has been advanced that it was improper for the Director to make such evaluation and for the respondent Commission to take same into consideration as there had not been submitted by then the confidential reports for the applicants in respect of the year 1983.

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In the first place the Director of the Department did not refer to the possible contents of confidential reports that had not been prepared and were not placed before the respondent Commission but he only spoke in recommending the two interested parties as having during 1983 shown a better performance than the previous year and then he went on to grade the performance during that year of the two applicants Kazamias and Hadji-Georghiou and the two interested parties.

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To my mind this is a correct approach because the respondent Commission has to be informed of the merits of candidates as they stand on the day it examines the matter, that is, the day it hears the recommendations of the Head of the Department and not stop, as in this case would have been, almost a year back. In fact, under section 44(3) of the Public Service Law 1967, the Commission in making a promotion must have due regard not only to the annual confidential reports on the candidates but also to the recommendations made in that respect by the Head of the Department. From the wording of this section it is clear that the recommendation cannot be confined as regards time limits to the year of the last confidential report

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submitted, but to the period up to the moment such recommendation is made.

5 On the first ground earlier referred to as to misconception of fact on account of the wrong aggregation made by the Departmental Board of the merit of the candidates as emanating from their confidential reports, having gone through same and made a short reference earlier hereinabove, I have come to the conclusion that there does not exist any misconception of fact in this case.

10 Counsel for the applicant Samoutis who was not one of those included among the four candidates recommended by the Departmental Board, as argued that there has been a violation of regulation 6 of the relevant Regulatory Orders inasmuch as the Departmental Board recommended only four candidates.  
15 whereas it could recommend up to eight, as long as there were suitable persons for such recommendation. Regulatory Order 6 provides, inter alia, in its proviso that "no less than two and no more than four must be recommended for every vacant post so long as there exist suitable persons for such recommendation".  
20 This proviso does not cast a duty on a Departmental Board to recommend four candidates for each post and there cannot be said that in the circumstances of this case there has been any violation of this order or of any principle of law on account of the recommendation made by the said Board which gave  
25 its views in its report on the matter.

On the totality of the circumstances, I have come to the conclusion that the respondent Commission has exercised its discretion properly and on the basis of the material before it, it duly inquired into every aspect of the case and gave its reasoning  
30 on the subject, its decision being reasonably open to it.

For all the above reasons, these recourses are dismissed but in the circumstances there will be no order as to costs.

*Recourses dismissed. No order as to costs.*