

1984 February 28

[PICKS. J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KATERINA PERICLEOUS AND OTHERS.

*Applicants.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Case No. 375/82).

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*Public Officers—Promotions—Qualifications—Proper date for deciding whether a candidate has the qualifications envisaged by the scheme of service is the date of promotion—Regulation 3 of the Regulations Governing Establishment of Departmental Committees does not cast a duty on the Public Service Commission to effect promotions within a specified interval of time.* 5

The sole issue for consideration in this recourse was whether the material date for determining whether a candidate has the necessary qualifications was the date when the promotion was effected or a fortnight\* after the Commission is invited by the appropriate Authority to fill the vacant posts: 10

*Held*, that both in principle, on a proper consideration of the nature of the decision to promote, as well as on authority the proper date for deciding whether a candidate for promotion has the qualifications envisaged by the scheme of service is the date of promotion. 15

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\* Regulation 3 of the Regulations Governing the Establishment of Departmental Committees requires the Commission to submit to the appropriate Department a list of the candidates eligible for promotion within two weeks from the date of the request to fill the post.

Held, further, that regulation 3 of the Regulations Governing the Establishment of Departmental Committees does not cast a duty on the Commission to effect promotions within a specified interval of time; that the requirement to submit a list of candidates within two weeks is a directive in the interest of speedy administration; that if it was mandatory its non-observance, as in this case, would again vitiate the whole process of promotions.

*Sub judice promotion annulled.*

10 Cases referred to:

*Panayides v. Republic* (1972) 3 C.L.R. 467, and on appeal (1973) 3 C.L.R. 478;

*Kitromilides v. Republic* (1965) 3 C.L.R. 531.

15 *Decisions of the Greek Council of State Nos.: 1697/50, and 1001/65.*

#### Recourse.

Recourse against the decision of the respondent to promote the interested parties to the post of Data Processing Officer, 1st Grade in preference and instead of the applicants.

20 *E. Lemonaris with Chr. Hjiyiannis*, for the applicants.

*A. Papasavvas*, Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

25 PIKIS J. read the following judgment. Although the dispute of the parties has been narrowed to one involving resolution of a fairly straight forward legal point, to appreciate the dimensions of the issue, it is, I believe, advisable to examine the facts leading to the revocation of the decision of the Public Service Commission, hereafter the Commission, to appoint four of  
30 the applicants to the post of 1st Grade Data Processing Officer, a promotion post in the Ministry of Finance. A request to fill the posts addressed to the Commission was made, on behalf of the Minister of Finance, by letter dated 6th March, 1981. Thereafter, responsibility rested with the Commission to set  
35 in motion the machinery for the filling of the posts. For reasons

undisclosed, it took the Commission nearly a year to take the first steps for making the promotions. The decision to activate the process was taken by letter dated 19th February, 1982, addressed to the Director of the Department of Data Processing. They were requested to set up a departmental committee to evaluate the merits of the candidates according to the procedure laid down by the regulations governing the establishment of such committees. A list of candidates was furnished as well as the necessary material evidencing their service and performance at work. The list included all five applicants.

It is common ground that the applicants, each one of them, had on 19th February, 1982, the qualifications envisaged by the scheme of service for promotion to the post under consideration, and that included three years Governmental experience as required by the scheme of service. Soon afterwards, the departmental committee met to consider the suitability of the candidates listed as eligible for promotion. They formed the view that all candidates were suitable for promotion. On 16th March, 1982, they informed the Commission accordingly.

The Commission was formally apprised of the conclusions of the departmental committee by the Director at its meeting of 15th April, 1982. After listing the candidates in alphabetical order they adjourned further deliberations into the matter to a future date. At its resumed meeting of 7th May, 1982, the Director made an evaluation of the candidates and expressed his recommendations. Decision was postponed once more to make it possible for the Commission to receive legal advice on the interpretation of the scheme of service with particular reference to the kind of Governmental experience envisaged by the scheme.

Counsel of the Republic communicated his opinion on 15th July, 1982, removing doubts that might otherwise be entertained as to the possession by any one of the candidates of the necessary experience required by the scheme of service. Thus, the ground was finally cleared for the Commission to decide who should be promoted. A decision was taken at the meeting of the Commission of 5th August, 1982.

The Commission decided, after due consideration of the merits of the candidates, to appoint nine of them including four of the applicants, i.e. all applicants except applicant Kyprianou. For reasons that appear nowhere on record, the decision was not implemented. Instead it came up for re-consideration at the meeting of the Commission of 17th August, 1982. Relying on an opinion of the Deputy Attorney-General given long ago in connection with another matter (exhibit 1), they decided to revoke their decision to promote the applicants on the ground that they did not possess the Government experience envisaged by the scheme of service at the material time, that is on 21st March, 1981, a fortnight after request was first made by the Administration to fill the posts. It is rather surprising the Commission did not seek advice on the implications of the aforesaid opinion and its applicability to the circumstances of the case. One is apt to gain the impression that they dealt with the matter in a cursory manner. They left the remaining five promotions intact and filled one more post by the appointment of Michael Hjiassiliou, a candidate not recommended by the head of his department. Moreover, they excluded applicant Andreas Kyprianou for similar reasons with those that led them to revoke the appointment of the remaining four applicants.

The only legal question arising for decision is whether the exclusion of the applicants as candidates for promotion was justified.

Counsel for both sides are at one that the material date for determining whether a candidate has the necessary qualifications for promotion is the date when the promotion is effected, a date that virtually coincides ordinarily with the date when the Commission decides the promotions. The consensus of opinion among counsel is founded on authority as well as proper appreciation of the provisions of the Public Service Law—33/67. There is clear authority of the Greek Council of State adopting the validity of this proposition. See, inter alia, Decisions 1697/50 and 1001/65. In *Panayides v. Republic*, (1972) 3 C.L.R. 467, A. Loizou J. came to a similar conclusion after consideration of the relevant provisions of Law 33/67. The decision on appeal left this view of the law unaffected—See *Panayides v.*

*The Republic*, (1973) 3 C.L.R. 478. Support for this proposition, albeit indirect, is also derived from the decision of Stavrinides, J. in *Kitromilides v. The Republic*, (1965) 3 C.L.R. 531. In my judgment both in principle, on a proper consideration of the nature of the decision to promote, as well as on authority the proper date for deciding whether a candidate for promotion has the qualifications envisaged by the scheme of service is the date of promotion. As the formal act of promotion follows closely on the decision to promote, the Commission may act on the assumption that candidates for promotion must possess the necessary qualifications at the time they make the promotions. Counsel for the applicants submitted acceptance of this principle of administrative law settles the dispute in the case; for, it is common ground that in August, 1982, the applicants possessed the necessary qualifications for promotion. Counsel for the respondent submitted this is not the pertinent question in this case and that acceptance of the above principle does not conclusively settle the outcome of this recourse. Here the pertinent question is whether the applicants could be properly considered as candidates for promotion. The date for settling the list of candidates for promotion is not the date when promotion is decided, but an earlier date. By way of example he referred to the date of appointment of first entrants to Government service limited by the advertisement of the post in the Official Gazette. Such time limits for settling the list of candidates must be observed in the interest of certainty in the administrative process, a subject discussed at p. 315 of the *Conclusions of the Greek Council of State 1929-1959*. Relying on the opinion of the Deputy Attorney-General he argued that in the case of promotions the time for the determination of the list of candidates is a fortnight after the Commission is invited to fill the vacant posts, in this case the 21st March, 1981. Mr. Loucaides takes this view, in his advice, on a consideration of regulation 3 of the relevant Regulations requiring the Commission to submit to the appropriate Department a list of the candidates eligible for promotion within two weeks from the date of the request to fill the post.

Mr. Loucaides did not suggest that the above is invariably the time at which eligibility for promotion should be decided. Certainly he did not advise that the list of candidates for promo-

tion should be compiled 15 days after a request to fill the post irrespective of the date when the Commission actually submits the list of candidates. As a matter of reason and common sense the list of candidates must include all those eligible for promotion at the time of its compilation.

It is settled in administrative law, that in the absence of a provision to the contrary, the making of a promotion rests with the appointing body. It is a matter within their discretion (see *Conclusions of the Greek Council of State 1929-1959*, p. 348). Regulation 3 of the aforementioned Regulations does not cast a duty on the Commission to effect promotions within a specified interval of time. The requirement to submit a list of candidates within two weeks is a directive in the interest of speedy administration. If it was mandatory its non-observance, as in this case, would again vitiate the whole process of promotions. Apart from setting down the desirable time limit for activating the process of selection, thereby indirectly setting a time limit for practicable purposes for defining the list of eligible candidates, regulation 3 does not establish a time limit for determining eligibility of candidates for promotion. If the list is submitted at a later date, as in this case, the duty of the Commission is to include therein every candidate that has at the time the necessary qualifications as was done in this case. Arguably, as we are concerned with promotions, their duty is to include in the list every candidate reasonably expected to have the qualifications for promotion at the time of making the promotions.

One is left to wonder why the Commission decided to change the list of candidates without seeking further legal advice on the matter. Their decision was, in my judgment, totally wrong. If one were to probe the implications of their decision, by delaying activation of the process for promotion, many candidates having the qualifications for promotion at the time of filling the post could be excluded for no good reason. The decision of the Commission, if accepted as based on sound principles of administrative law, it could lead to endless abuse.

In view of the above, I am of opinion that the decision is wrong, ill-founded in law and fact, and as such must be annulled.

So I order. The recourse succeeds. It is with reluctance I decided to refrain from directing the respondents to pay the costs of the proceedings.

*Sub judice decision annulled. No order as to costs.*

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