

1984 March 17

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS CONSTANTINOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondents.

(Case No. 54/83).

Public Officers—Promotions—Head of Department—Recommendations—Departure from—To be reasoned—Superior merit and better qualifications of interested party constituting very powerful reasons for deviating from the recommendations of Head of Department—Reasonably open to the Commission to select the interested party in preference to the applicant in view of these reasons.

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Public officers—Promotions—Merit—Is the foremost consideration to which regard should be paid in making promotions.

In deciding to promote the interested party to the post of Senior Lecturer in Engineering at the Higher Technical Institute the respondent Commission departed from the recommendations of the Head of Department who had recommended for promotion the applicant.

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Though the applicant had 1 1/2 year's seniority over the interested party the latter was superior in terms of merit and possessed qualifications which, under the relevant schemes of service, constituted an advantage.

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Upon a recourse by the applicant challenging the said promotion the sole issue for consideration was whether the Commission sufficiently reasoned its decision to depart from the recommendations of the Head of Department.

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5 *Held*, that though the Public Service Commission is under
 a duty to pay especial regard to the recommendations of a
 departmental head they can depart from his recommendations
 whenever they consider this course conducive to the interests
 of the service and provided they reason such departure;
 that in this case, they gave detailed reasons for not following
 the recommendations of the Head of Department because
 10 the interested party emerged, on a review of the material before
 them, as a better candidate in terms of merit and qualifications,
 that is, on the first two of the three considerations that should
 guide them, according to law, in making their selection (see
 s. 44(3) of Law 33/67); that merit, it has been repeatedly stressed,
 is the foremost consideration to which regard should be paid
 in making promotions; that not only they reasoned their depart-
 15 ture from the recommendations of the departmental head, but
 had very powerful reasons for deviating therefrom: that it was
 reasonably open to them to select the interested party; and
 that accordingly the recourse must fail.

Application dismissed.

20 Cases referred to:

Larkos v. Republic (1982) 3 C.L.R. 513;

Papadopoulos v. Republic (1982) 3 C.L.R. 1070;

Theodossiou v. Republic, 2 R.S.C.C. 44 at p. 48.

Recourse.

25 Recourse against the decision of the respondent to appoint
 the interested parties to the post of Senior Lecturer in preference
 and instead of the applicant.

E. Lemonaris with *Chr. Hadjiyiangu*, for the applicant.

30 *N. Charalambous*, Senior Counsel of the Republic, for the
 respondent.

Cur. adv. vult.

ΠΙΚΙΣ J. read the following judgment. The recourse is directed
 against the validity of the decision of the Public Service Commis-
 sion to appoint the interested parties, namely, I. Michaelides
 35 and M. Pattichis, to the post of Senior Lecturer in Engineering,
 at the Higher Technical Institute. The applicant and the inter-
 ested parties were among the four candidates shortlisted by the
 departmental committee as eligible and best qualified for pro-

motion. They held the post of Lecturer "A", one grade below that of Senior Lecturer, in the personnel hierarchy of the Institute. After definition and elucidation of the issues in dispute by the pleadings, matters in dispute were narrowed to a single issue: Whether the Public Service Commission sufficiently 5
reasoned its decision to depart from the recommendations of the head of the department who had recommended for promotion the applicant and interested party Michaelides. At the hearing, the recourse against interested party Michaelides was abandoned, 10
in view of failure to propound any reason whatever for annulling the decision to promote him. Like the applicant, he had the recommendations of the head of the department. On any objective view of the material before the Commission, he had, altogether excellent qualifications for promotion. With the 15
abandonment of the recourse against interested party Michaelides, the issue was further narrowed to examination of the reasoning of the Commission bearing on the selection of interested party Pattichis in preference to the applicant.

Examination of the decision of the Commission, indicates they examined the personal files of the candidates and reflected 20
on the implications of their confidential reports for comparison purposes. They made special reference to the confidential reports of the preceding two years and noted their overall rating—"Very Good" in the case of the applicant and 25
"Excellent" in the case of the interested party. Perusal of the confidential reports in previous years, suggests that their performance at the last two years was fairly representative of their overall performance. Undoubtedly, the last confidential reports have, because of their recency, the advantage of disclosing an 30
up-to-date assessment of the performance of a candidate at work and, the value of his services.

Having noted the superiority of the interested party in terms of merit, as emerging from a comparison of his confidential reports, with those of the applicant, they proceeded to make 35
special reference to his superior qualifications. The schemes of service made possession of a post-graduate qualification an advantage for promotion. As noticed in *Larkos v. Republic* (1982) 3 C.L.R. 513 and *Papadopoulos v. Republic* (1982) 3 C.L.R. 1070, possession of additional qualifications to those

envisaged by the schemes of service, can reliably be regarded as a distinct advantage where the scheme so postulates.

5 The comparison between the candidates was completed by noting the seniority of the applicant over the interested party extending to about 1 1/2 years. Because of the superiority of the interested party in terms of merit and qualifications, the Public Service Commission considered it proper to depart from the recommendations of the departmental head. Counsel for
10 the respondents submitted that reading through the evaluation of the candidates and the recommendations of Mr. Christodoulides, the head of the department, one can fairly assume that in recommending the applicant he was motivated by compassionate considerations. He made specific reference to the fact that applicant was due for retirement in a matter of two
15 years. Whatever his reasons may have been in recommending the applicant, the fact remains applicant had his recommendations for promotion.

From the early days of administrative law in Cyprus, it was acknowledged the Public Service Commission was under a duty
20 to pay especial regard to the recommendations of a departmental head—*Michael Theodossiou v. Republic*, 2 R.S.C.C. 44 at 48. This principle has been consistently followed since. The need to heed the recommendations of the head of the department, now finds expression in the law—see, s.44(3) of the Public
25 Service Law, 33/67. The prominence attached by administrative law to the recommendations of a departmental head, is designed to ensure that in making their selection, the Public Service Commission receives guidance from the officer best placed to depict the qualities needed for a successful discharge of the duties
30 carried by the post about to be filled by promotion. Also, the head of a department is in a unique position to advise on the qualities and worth of his subordinates.

But the recommendations of the head of a department do not bind the Commission who are, under s.5 of the Law, the
35 arbiters of manning the Public Service by appointment and promotion. They can depart from the recommendations of the departmental head whenever they consider this course conducive to the interests of the service. In the interests of good administration, they must reason their departure from the recom-

recommendations of the departmental heads in order to dispel any possibility of arbitrariness or abuse of their powers in making their selection.

In this case, they gave, what I regard, detailed reasons for not following the recommendations of Mr. Christodoulides. The interested party emerged, on a review of the material before them, as a better candidate in terms of merit and qualifications: that is, on the first two of the three considerations that should guide them, according to law, in making their selection (s.44(3) of Law 33/67). Merit, it has been repeatedly stressed, is the foremost consideration to which regard should be paid in making promotions. In my judgment, not only they reasoned their departure from the recommendations of the departmental head, but had very powerful reasons for deviating therefrom. To say the least, it was reasonably open to them to select the interested party in preference to the applicant, in view of the reasons given.

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

Recourse dismissed. No order as to costs.