

1984 May 2

[TRIANTAFYLIDIS, P., A. LOIZOU, SAVVIDES, LORIS, STYLIANIDES, JJ.]

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Appellant,

v.

KATERINA PERICLEOUS AND OTHERS,

Respondents.

(*Revisional Jurisdiction Appeal No. 366*).

5 *Public Officers—Promotions—Promotion posts—Material date at which a candidate for promotion must possess the required qualifications under the relevant schemes of service is the date on which the request for the filling of a vacancy is received by the Public Service Commission under section 17 of the Public Service Law, 1967 (Law 33/67).*

The sole issue for determination in this appeal was the material date at which a candidate for promotion must possess the required, under the relevant schemes of service, qualifications.

10 *Held*, that the first material date at which a candidate must possess the required qualifications in the case of a First Entry and First Entry and Promotion Post, is the last date of the period prescribed in the advertisement for the vacancy by which applications have to be submitted and in respect of promotion
15 posts only, where no applications are made, inevitably it is the date on which the request for the filling of a vacancy under section 17 of the Public Service Law, 1967 (Law 33/67) is received by the Commission.

Appeal allowed.

20 Cases referred to:

Aristotelous v. Republic (1969) 3 C.L.R. 232;

Papapetrou v. Republic, 2 R.S.C.C. 61;

Panayides v. Republic (1972) 3 C.L.R. 457;

Kitromelides v. Republic (1975) 3 C.L.R. 531.

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Pikis, J.) given on the 28th February, 1984 (Revisional Jurisdiction Case No. 375/82)* whereby the decision of the Public Service Commission to promote the interested parties in preference and instead of the applicants was annulled.

L. Loucaides, Deputy Attorney-General of the Republic
with *A. Papasavvas*, Senior Counsel of the Republic,
for the appellant.

E. Lemonaris, for the respondents.

Cur. adv. vult.

TRIANTAFYLIDES P.: The judgment of the Court will be delivered by Mr. Justice A. Loizou.

A. LOIZOU J.: The only legal issue for determination is with regard to the material dates at which a candidate for promotion must possess the required, under the relevant Scheme of Service, qualifications.

The facts of the case are not in dispute. By letter dated the 6th March 1981, addressed to the Chairman of the appellant Commission, the Director-General of the Ministry of Finance, acting in this case in the capacity of the appropriate Authority concerned under section 17 of the Public Service Law, 1967 (Law No. 33 of 1967), moved the appellant Commission to proceed to fill the vacancies existing in the post of Data Processing Officer, 1st Grade, which is a promotion post in the Ministry of Finance. Unlike the instances of First Entry and First Entry and Promotion Posts which have under section 31(1) of the Law to be advertised in the official Gazette of the Republic, no such need arises understandably for Promotion Posts, because they have, as provided by section 31(2) of the law, to be filled by the promotion of officers serving in the immediately lower grade or office of a particular section or sub-section of the public service. As it was very rightly put by the learned trial Judge in his judgment "thereafter responsibility rested with

* Reported in (1984) 3 C.L.R. 226.

the Commission to set in motion the machinery for the filling of the post".

5 These posts in question are not considered as specialised ones, hence they come within the ambit of section 36 of the Law which provides for the establishment of Departmental Boards, the
10 composition, functions and procedure of which will be determined by the Council of Ministers, which has for the purpose prescribed Regulatory Orders by its Decision No. 17.768 dated 1st March, 1979, and which were circulated by the Director
15 of the Department of Personnel to all Government Departments and Independent Offices, by Circular No. 490 of the 20th March 1979, and which Regulatory Orders came into force on the 1st June 1979.

15 No action was taken thereafter by the appellant Commission until the 19th February 1982, when a letter was addressed to the Director of the Department of Data Processing to set up a Departmental Board, as provided by regulation 3 of the afore-
20 said Regulatory Orders. The Secretary of the appellant Commission forwarded also, five copies of the list of candidates for promotion to the said post; eight files of confidential reports on the candidates; nine personal files; and five copies of the
25 Scheme of Service for the said post. This letter from the appellant Commission, together with the attached documents had, by virtue of the said Regulatory Orders to be sent within two weeks from the date that the filling of this promotion post was
30 asked to be done by the appellant Commission. It appears, however, that because of the general reorganization of the Public Service, which included reorganization of this department and these posts, the delay in asking the setting up of the Departmental
35 Board was inevitable and in any event, as rightly found by the learned trial Judge, the requirement to submit a list of candidate within two weeks is a directive in the interest of speedy administration and not mandatory, in which case its nonobservance would vitiate the whole process of promotions.

35 The Departmental Board considered the candidates and it came to the conclusion that all candidates possessed the qualifications required by the Scheme of Service for the post and prepared a list of the eleven candidates in alphabetical order and gave its views in respect of each one of them.

The appellant Commission then at its meeting of the 7th May, 1982, proceeded to consider the filling of the posts. It postponed, however, further examination as there arose the question as to the meaning of the required qualification "four year, at least, experience in data processing, which must include analysis of systems and or programming of electric computers of which three at least in the Public Service". A legal opinion was sought by the appellant Commission which was given to it to the effect, that experience in the Public Service has a different meaning than "Public Service" or "service", which terms unlike experience are defined by section 2 of the Law as excluding "service by persons whose remuneration is calculated on a daily basis" as, indeed, experience is unrelated to the nature of the service and the remuneration. Two cases were referred to in the opinion given by the legal Assistant, attached to the appellant Commission, as relevant in this respect, namely that of *Aristotelous v. The Republic* (1969) 3 C.L.R. 232 and *Theodoros Papapetrou v. The Republic*, 2 R.S.C.C. 61, where at p. 70 it was said that "the term 'experience' inevitably contains the notion of knowledge acquired through acting in a certain capacity and cannot be reasonably interpreted as amounting to knowledge acquired through observation and study".

The appellant Commission then at its meeting of the 5th August 1982, proceeded with the filling of the post and chose nine of the eleven candidates. But before, taking any further step, the appellant Commission at its meeting of the 17th August 1982 re-examined the matter and ascertained that the four applicants did not possess the required qualification of the relevant Scheme of Service, namely of four years experience at all material times, in particular at the time of the preparation of the list of candidates by the secretary of the Public Service Commission for forwarding to the appropriate Departmental Board, time which in accordance with the opinion of the Deputy Attorney-General of the Republic under No. 31(C)/61/4 and dated 27th November 1980, should not exceed two weeks from the submission of the proposal of the appropriate Authority, for the filling of the post. The proposal of the appropriate Authority was submitted on the 6th March 1981 and the present applicants did not possess on the 21st March 1981, "experience of four years in data processing, which included analysis of systems and of programming on electronic computers of which at least three in the Public Service". The appellant Commission then

in view of the above “decided to revoke its decision dated 5th August 1982 for the promotions to the post of Data Processing Officer 1st Grade”. It then appointed another officer to one of the posts as possessing the required qualifications and being
5 suitable for it and left the remaining post vacant.

A perusal of the records and a study of the whole process followed by the appellant Commission is indicative of the thorough way in which it acted in this case. In fact the opinion of the Deputy Attorney-General referred to in the minutes of
10 the appellant Commission, is, in so far as relevant, as follows:

“In my view the qualifications required for promotion to promotion posts on the basis of Section 44(1)(b) of the Public Service Law must be possessed by the candidate
15 (a) at the time of the act of promotion by the Public Service Commission, and (b) at the time of the preparation of the list of candidates by the Departmental Board and the time of the consideration of the relevant merits of the candidates by the same board and (c) at the time of the preparation
20 of the list of candidates for promotion by the Public Service Commission for forwarding to the Chairman of the appropriate Departmental Board which is limited to two weeks from the date when the filling of the promotion post was asked to be done by the Public Service Commission”.

It is not in dispute that the candidates did not possess the
25 required experience at the time of the preparation of the list of candidates by the secretary of the appellant Commission though they possessed it on the 19th February, 1982.

There was a consensus among counsel, which the learned trial Judge indorsed, as far as the requirement of possessing the necessary
30 qualifications for promotion by a candidate on the date on which the promotion is made. This was founded, as the learned trial Judge pointed out, on a proper appreciation of the provisions of the Public Service Law, and on authorities both of the Greek Council of State,—and reference inter alia was
35 made to its decisions No. 1697/50, 1001/65—and to our Case Law namely to those of *Panayides v. The Republic* (1972) 3 C.L.R. p. 457 and *Kitromelides v. The Republic* (1975) 3 C.L.R. p. 531 which latter case was to be considered, as indirectly lending support to the aforesaid proposition.

This, however, was not the end of the matter as it was argued on behalf of the appellant Commission that candidates should possess the necessary qualifications at an earlier also date, namely the date of settling the list of candidates for promotion which it was only natural, as such list should include all those eligible for promotion at the time of its compilation.

The learned trial Judge rejected this submission on the ground that regulation 3 does not establish a timelimit for determining eligibility for candidates for promotions and that if the list is submitted at a later date, as in the present case, the Commission was duty bound to include therein every candidate that had at the time the necessary qualification as it was done when they first reached the decision which was subsequently revoked, which he held, was wrong and added that "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".

Before, however, proceeding any further it should be pointed out that in the *Panayides* case (*supra*), the issue was whether the applicant in that case who had acquired the required qualifications after the subject promotions were made by the Commission, could be considered as a candidate because of the Commission examining, on account of the reorganization of the service, as from which date such promotions should take effect. The question of a candidate not possessing qualifications at some critical time prior to the making of the promotion by the Commission and acquiring them in the meantime and possessing same on the date the promotions were made could not and did not arise.

In *Kitromelides* case (*supra*), the question arose as to the meaning of the Scheme of Service then in force and the Commission deferred making an appointment pending clarification by the Council of Ministers. The scheme was accordingly amended, thus removing the difficulty. The applicants in that case did not qualify under the scheme as amended though they qualified under the old scheme. So the decision of the Commission to

exclude them as candidates because of the requirements of the amended scheme was declared as null and void.

It has been argued before us by the Deputy Attorney-General, who led the case for the appellant Commission that support
5 for his opinion, earlier referred to and which he reiterated in this Court, may be found in the Law itself and in particular in section 17, by virtue of which the motion or proposal to take action for the filling of vacancies in any public office has to be made in writing to that effect by the appropriate Authority
10 concerned, read in conjunction with its sections 30 and 31, as amended by Laws Nos. 31 of 1980, 10 of 1983 and 20 of 1984. He urged that by analogy to the case of First Entry and First Entry and Promotion Posts, in respect of which the vacancy has to be advertised in the official Gazette and a candi-
15 date must possess the required qualifications at the time at least of submitting his application which has to be within the specified time in such notice, normally three weeks from publication, so in the case of a vacancy in a promotion post the quali-
20 fications must be possessed within the period of 14 days prescribed in regulation 3 of the Regulatory Orders, during which time the list of candidates has to be submitted to the Departmental Board.

Before we proceed any further, we consider it useful to set out herein section 35 of the Law which deals with the selection
25 for vacancies in specialized offices and which reads as follows:-

- “(1) Before any appointment or promotion to a specialized office, the Commission shall ask for the advice of the appropriate Advisory Board.
- (2) All applications received by the Commission for any
30 vacancy advertised or, in the case of promotion to a Promotion office, a list of the candidates eligible for promotion thereto prepared by the Commission shall be forwarded by the Secretary of the Commission to the chairman of the appropriate Advisory Board within
35 a fortnight of the closing date for the submission of applications or of the date on which the Commission received a request for the filling of the Promotion office, as the case may be.

- (3) The Advisory Board shall examine all the applications received for any vacancy advertised or the list of candidates eligible for promotion thereto, as the case may be, and prepare a list of those candidates who possess all the qualifications prescribed in the relevant scheme of service. 5
- (4) The Advisory Board shall then take steps to determine the relative merits of the candidates. In determining the merits of the candidates the Advisory Board may require the candidates to undergo a written or oral examination or both. 10
- (5) The advisory Board shall then forward a report to the Commission containing the names of the candidates recommended for selection for appointment or promotion, in their alphabetical order: 15
 Provided that, if suitable candidates are available, not less than four candidates shall be recommended in respect of each vacant office.
- (6) The Commission shall select the persons to be appointed or promoted from amongst the candidates recommended by the Advisory Board: 20
 Provided that the Commission may interview the candidates recommended by the Advisory Board before making the selection”.

Unlike the position in other countries and particularly in Greece where express statutory provision has been made as regards the material dates at which a candidate must possess the required qualifications, no such provision exists in our law. It is therefore by reference to the totality of the relevant provisions of the Public Service Law that a decision has to be reached on the subject. 25 30

It transpires from an examination of section 35 read in conjunction with sections 30 and 31 as amended, that in cases of filling of vacancies of First Entry and First Entry and Promotion posts an application has to be submitted by a candidate,—(subject to the exception made by the proviso to section 31(1) which was added by section 2 of Law No. 10 of 1983 with which we are not concerned on this occasion); in response to an advertise- 35

ment for a vacancy which has to be made by virtue of the provisions of section 31(1) and in which the date by which applications must be submitted has to be specified. Consequently in view of the said imperative provisions no one can be considered as a candidate if in such cases he has not submitted an application within the prescribed time.

Furthermore in the case of appointments or promotions to a specialized post all applications received, or in the case of promotions to a Promotion Post, a list of the candidates eligible for promotion thereto prepared by the Commission, has to be forwarded by its Secretary to the Chairman of the appropriate Advisory Board within a fortnight of the closing date for the submission of applications or the date on which the Commission received a request for the filling of the promotion post, as the case may be, as provided by subsection 2 of section 35 hereinabove set out.

It is obvious that the 14 days period allowed to the Commission to forward the application or prepare the list of eligible candidates from the closing date specified in the advertisement or the date on which the request for the filling of the promotion office was received by it is a period that was intended to facilitate the work of the Commission rather than affect in substance the administrative process.

Given therefore that the examination of the eligibility of the candidates commences in the case of specialized posts when the applications are submitted or in the case of promotions to such posts only when the list of eligible candidates is prepared for transmission to the Advisory Board and that the 14 days period during which this has to be done is only intended, as already said, to facilitate the work of the Commission, one is led to the conclusion that a candidate must possess the required qualifications the latest on the last date that he is allowed to submit his application in respect of posts to which section 31(1) of the Law refers and in the case of officers in the service who are entitled to promotion to a post to which section 31 subsection 2 of the Law refers on the date on which the request for the filling of the promotion post was received. It is as a matter, however, of equal treatment and for the sake of uniformity that the eligibility for all candidates in cases of First Entry and First Entry and Promotion Posts must exist on the last date

specified in the advertisement for the submission of applications which naturally in time comes after the date the request of the appropriate Authority for the filling of a post is received by the Commission.

As regards, however, nonspecialised offices, no such elaborate provisions are to be found in the Law itself. Section 36 thereof which provides for the establishment of departmental boards for the purpose of advising the Commission in respect of appointments or promotions to any office which is not a specialised one, empowers instead the Council of Ministers to make Regulatory Orders which have been made in this case as we have seen and which are modelled, as circumstances permit, on the procedure prescribed by section 35 of the Law, and there is nothing against this procedure which achieves to the extent possible the desired uniformity in the process of appointments and promotions to various offices.

With the aforesaid in mind we have considered the issues raised before us very carefully as they are of great importance because of their general application and their consequence to public officers or prospective candidates for public offices and we have come to the conclusion that the first material date at which a candidate must possess the required qualifications in the case of a First Entry and First Entry and Promotion Post, is the last date of the period prescribed in the advertisement for the vacancy by which applications have to be submitted and in respect of Promotion Posts only where no applications are made, inevitably it is the date on which the request for the filling of a vacancy under section 17 of the Law is received by the Commission. These dates are the dates on which the substance the administrative process for appointments and promotions by the Commission is set in motion. They are as such impersonal in character and unrelated to the expeditious or delayed action of the appropriate administrative organ concerned with such appointments and promotions and which are fundamental safeguards for good and proper administration. Needless to say that the candidates must continue to possess the required qualifications also on the day the decision to appoint or promote him is made. And we agree on this point with the learned trial Judge.

Furthermore the possibility of candidates being required to go through a written or oral examination or both, as provided

by subsection 4 of section 31 or subsection 4 of section 35, strengthens the view that once this precedes the making of the decision for appointment or promotion by the Commission a candidate must possess the required qualifications when undergoing such examination, which takes place naturally earlier than the date the decision to appoint or promote is made. Likewise where interviews are held.

Any other approach would inevitably lead to odd situations by candidates becoming eligible up to the last moment between the various stages of the administrative process and the final making of the decision to appoint or promote by the respondent Commission.

We therefore regret that we cannot uphold the judgment of the learned trial Judge which we set aside. We allow the appeal and we confirm hereby the sub-judice decision as the four respondents in this appeal did not possess the required qualifications under the relevant scheme of service on the date the request for the filling of these promotion posts was received by the Commission.

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Appeal allowed.