

1984 June 7

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

AGAPIOS KOKKINOS AND ANOTHER,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Cases Nos. 29/81, 46/81).

Public officers—Promotions—Seniority—It only prevails if all other things are equal which were not in this case in view of the better confidential reports of the interested parties—Applicants failed to discharge their burden of establishing striking superiority as against the interested parties—Sub judice decision reasonably open to the respondent.

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These recourses were directed against the decision of the respondent Public Service Commission to promote the 35 interested parties to the post of Clerk 2nd grade in preference and instead of the applicants. The applicants were senior by about one year to one of the interested parties (Lottidou) and ranked equally in seniority as far as the remaining interested parties were concerned. Interested party Lottidou, however, had better confidential reports than the applicants.

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Held, (1) that it was reasonably open to the respondent Commission to arrive, on the material before it, to the sub judice decision and the applicants on whom the burden lay to establish striking superiority as against the interested parties, or any of them, in order to succeed in the present recourse, have failed to discharge same; that there has been neither misconception of law or fact, nor any abuse or excess of power and the sub judice decision was reached after a proper inquiry and is duly reasoned.

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(2) That seniority prevails when all other things are more or less equal; that in view of the better confidential reports of interested party Lottidou the short seniority of the applicants could not prevail as against this interested party as not all other factors were equal; accordingly the recourses should fail.

Applications dismissed.

Cases referred to:

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

Partellides v. Republic (1969) 3 C.L.R. 480.

10 Recourses.

Recourses against the decision of the respondent to appoint the interested parties to the post of Clerk 2nd Grade in preference and instead of the applicants.

L. Papaphilippou, for the applicant in Case No. 29/81.

15 *K. Koushios*, for the applicant in case No. 46/81.

Cl. Antoniadès, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

20 A. LOIZOU J. read the following judgment. These two recourses have been heard together as they present common questions of law and fact inasmuch as the two applicants challenge the validity of the decision of the respondent Commission of the 20th October, 1980, by which it promoted to the post of Clerk 2nd Grade thirty-five Clerical Assistants as from the 1st
25 November 1980. In fact the two applicants have joined as interested parties, in all twenty-one of those promoted, and who are the same in the two recourses with the exception that interested party Charalambos Chistodoulides is included in Recourse No. 29/81, only and Andreas Papadouris is included in Recourse
30 No. 46/81.

The post of Clerk 2nd Grade is a promotion post from that of Clerical Assistant and the respondent Commission was asked to fill thirty-five vacancies that existed and were to be created by the promotion of holders of the post of Clerk 2nd Grade to

higher posts. A Departmental Board, under the chairmanship of the Director of the Department of Personnel, was set up under the provisions of section 36 of the Law. The said Board examined a list of candidates and prepared three lists. The first list contained the names of 198 candidates who possessed the required, under the relevant scheme, qualifications for promotion to the said post. The second, a list of 231 candidates who did not possess the required qualifications, either because they did not succeed in the required examinations (in all forty-one of them) or did not complete the necessary six year service at the post of Clerical Assistant and in addition some of them had not succeeded in the said exams. The third list contained in alphabetical order the names of seventy-four candidates with a comment in respect of each one of them, which the Departmental Board recommended for promotion. In this list applicant in Recourse No. 29/81 was not included, whereas applicant in Recourse 46/81 was included.

The respondent Commission at its meeting of the 20th October, 1980, examined all relevant facts before it, namely the personal files and the confidential reports of the candidates, as well as the report of the Departmental Board and decided that in addition to those recommended by the Board to include among the candidates on which the views of the Director of the Department of Personnel were to be heard, another thirteen candidates. The Director of the Department of Personnel attended the meeting of the respondent Commission and upon being informed of its decision to add another thirteen candidates, the meeting was adjourned so that he would be given some time to re-examine the facts relating to the said officers in comparison to those recommended by the Departmental Board. The meeting was later resumed and the Director of the Department of Personnel recommended the thirty-five candidates who were ultimately promoted by the respondent Commission. The relevant part of its minutes reads as follows:

“The Commission having examined all the facts before it, namely the personal files of the candidates and the confidential reports on them and having taken into consideration the conclusions of the Departmental Board and the recommendations of the Director of the Department of Personnel, concluded that the thirty-five candidates recommended by him are superior on the basis of the totality of the esta-

blished criteria (merit, qualifications and seniority) to the rest of the candidates, found them suitable and decided to promote them to the Permanent (Ordinary Budget) Post of Clerk 2nd Grade as from the 1st November 1980.

5 At the trial before me, the personal files and confidential reports of the two applicants and all the interested parties were produced as exhibits. I had also the advantage of having before me a table in each recourse showing particulars of the Government service and qualifications of each applicant and the interested parties joined by him in the respective recourse.

10 The grounds upon which the legality and validity of the sub
15 justice decision is challenged are the usual grounds of wrong exercise of discretion, of misconception of fact and a claim that they have ignored the superiority of the applicants, and
20 that the recommendation of the Head of the Department is not documented and reasoned nor is there anything recorded to show on what criteria the Head of the Department decided to recommend the fifteen candidates promoted by the respondent Commission. Only as regards interested party Elisavet Lottidou
25 are the two applicants senior, in that their first appointment as Clerical Assistants took place on the 1st May 1970, a post which they held until the date the sub justice decision was taken, whereas Lottidou was first appointed as a Clerical Assistant, unestablished, on the 1st May, 1970, but became permanent on the 1st April 1971. With regard to the rest of the candidates their date of first appointment and the date of appointment to the post they held on the date the sub justice decision was taken, was the same.

30 Having perused all relevant files and documents that have been placed before me I have come to the conclusion that the sub justice decision suffers from no legal defect. It was reasonably open to the respondent Commission to arrive, on the material before it, to the said decision, and the applicants on whom the burden lay to establish striking superiority as against the
35 interested parties, or any of them, in order to succeed in the present recourse, have failed to discharge same. There has been neither misconception of law or fact, nor any abuse or excess of power and the sub justice decision was reached after a proper inquiry and is duly reasoned.

As regards the seniority of the two applicants as against that of Elisavet Lottidou, it can only be stated what was said in the case of *Michael Theodosiou v. The Republic*, 2 R.S.C.C. p. 44 at p. 48 “that.....length of service is always one of the factors to be considered but it is not proper to treat such factor exclusively as the vital criterion always entitling to promotion the one candidate among many qualified ones, who possess such long service”. Furthermore it has to be born in mind that in the case *Partellides v. The Republic* (1969)³ C.L.R. 480, it was held “that seniority ought to prevail when all other things were more or less equal”. 5
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A perusal of the personal files and the confidential reports of the said interested party, shows that for the years 1977, 1978, 1979, she was graded as “Excellent” with two blue confidential reports, whereas the two applicants were graded for the same years as “Very Good”. The short seniority therefore of the two applicants could not prevail—if at all was such as to be taken into consideration—as against this interested party, as not all other factors were equal. 15

Before concluding, I would like to point out that the recommendations of the Head of the Department were duly warranted by the material in the relevant files which constitute also the reasoning for his said recommendation. 20

Finally it may be pointed out that the significance of having these two recourses decided upon is minimized by the fact that the two posts have since the enactment of the Public Officers (Conversion of Salaries and Arrangements on other Matters) Law, 1981, Law No. 22 of 1981, and circular No. 611 issued thereunder, become combined posts. 25

For all the above reasons these two recourses are dismissed with no order as to costs. 30

Recourses dismissed with no order as to costs.