

1984 May 19

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LANA DER PARTHOUGH,

Applicant,

v.

1. THE CYPRUS BROADCASTING CORPORATION,
 2. THE ADMINISTRATIVE BOARD OF THE
CYPRUS BROADCASTING CORPORATION,
- Respondents.*

(Case No. 417/83).

Public Officers—Promotions—Schemes of service—Interpretation and application—Judicial control—Principles applicable—Post of Senior Programme Officer in the Cyprus Broadcasting Corporation—Scheme of service making no reference to requirement of knowledge of Greek—No justification for reading into the scheme of service something not included therein—Interpretation adopted by respondents not reasonably open to them—Even if a requirement as to knowledge of Greek were to be read in the scheme of service respondents failed to carry out an inquiry into the knowledge of the applicant on the subject—Sub judice decision annulled.

Collective agreement—Of no consequence in public law.

The applicant, a Programme Officer 'A' was a candidate for promotion to the post of Senior Programme Officer. The respondents treated her as ineligible for promotion on account of lack of the requisite knowledge of Greek postulated in the scheme of service and hence this recourse. The qualifications required under the relevant scheme of service were long and successful service in the position of Programme Officer 'A', coupled with administrative and organizational abilities. The scheme of service for the post of Programme Officer—which was renamed or regraded as Programme Officer 'A'—required as an indispensable prerequisite for appointment "a thorough command of Greek".

Held, that the interpretation of a scheme of service is a matter amenable to the discretion of the administrative authority concerned; that the interpretation accorded to a scheme of service by the appointing authority will be sustained so long as it is one reasonably open to them by reference to the wording of the scheme; that since the scheme of service for the post of Programme Officer required, as an indispensable prerequisite for appointment, "a thorough command of Greek" no need arose to read into the scheme under consideration a requirement relevant to knowledge of Greek for, all those eligible for promotion were deemed to possess such knowledge; that, consequently, it can be validly inferred that omission to make reference, in the scheme of service, to knowledge of Greek, was done advisedly; that there was no justification whatever for reading, in the circumstances of this case, into the scheme of service something not included therein; and that, therefore, the interpretation of the scheme of service, adopted by the respondents in this case, was not one reasonably open to them; accordingly the sub judge decision must be annulled.

Held, further, (1) that even if there were to be read into the scheme of service a requirement as to knowledge of Greek, the respondents singularly failed to carry out an inquiry into the knowledge of the applicant on the subject; and that, accordingly, the sub judge decision must be annulled for this reason too.

(2) That the scheme of service cannot be read and interpreted subject to the collective agreement entered into between the respondents as employers and the Union of Employees of the C.B.C. because a collective agreement is of no consequence in public law, unless its content is made part of the regulations or practice of an administrative authority and in this case neither of the two happened.

Sub judge decision annulled.

Cases referred to:

- Kontemeniotis v. C.B.C.* (1982) 3 C.L.R. 1027 at p. 1032;
Droushiotis v. C.B.C. (1984) 3 C.L.R. 546;
Kapsou v. Republic (1983) 3 C.L.R. 1336;
Georgiades and Others v. Republic (1967) 3 C.L.R. 653;
Mytides and Another v. Republic (1983) 3 C.L.R. 1096.

Recourse.

Recourse against the decision of the respondents to promote the interested parties to the post of Senior Programme Officer in preference and instead of the applicant.

- 5 *Ph. Vialiantis* for *L. Papaphilippou*, for the applicant.
 P. Polyviou, for the respondents.
 E. Efstathiou with *N. Stylianidou (Miss)*, for interested party *R. Kouroupi*.

Cur. adv. vult.

- 10 ΠΙΚΙΣ J. read the following judgment. Lana der Parthogh and the four interested parties, namely Mikis Nikitas, Andreas Fantides, Anthos Rodinis and Rita Kouroupi, held the position of Programme Officer at the Cyprus Broadcasting Corporation. Following an agreement with the Union of Employees of the
 15 C.B.C. in 1982, the establishment of respondents was restructured in a manner entailing changes in the position of employees and, generally, the hierarchy of the Corporation. The Programme section was likewise restructured by the creation of a number of new posts not strictly corresponding to those abolished.
 20 The post of Programme Officer was abolished. The holders of the post, including applicant and interested parties, were employed in the position of Programme Officer "A". And, in that capacity, they became eligible for promotion to the post of Senior Programme Officer. When the post came to be filled,
 25 applicant, the interested parties and a number of fellow Programme Officers "A", became candidates for promotion, by submitting applications to that end in the prescribed form. The matter was dealt with on 6.9.1983 at a meeting of the Board of the respondents. They chose the interested parties who
 30 were, in consequence, appointed to the post of Senior Programme Officer. The applicant was turned down as a candidate, for lack of the qualifications prescribed by the scheme of service. She was treated as ineligible for promotion, on account of lack of the requisite knowledge of Greek postulated in the scheme
 35 of service setting forth the qualifications for promotion (see, the scheme of service approved on 5.4.1983). In so deciding, they adopted the views of an advisory committee, set up to screen the qualifications of candidates and make recommendations of their suitability for appointment (see, Appendix 2 to the Opposi-

tion). In consequence, no consideration was given to the candidature of the applicant for promotion.

By this recourse, applicant mounted a challenge to the legality of the decision of the respondents, founded, in her contention, on abuse or excess of the powers of the respondents and factually resting on a misconception of the facts relevant to her qualifications. The issues listed below call for resolution; defined, with the concurrence of the parties, at the outset of the hearing of the case:

- (a) The requirement, if any, provided for in the scheme of service, of knowledge of Greek as a necessary qualification for promotion. If required, the level of such knowledge. 10
- (b) The adequacy of the inquiry into the knowledge of applicant of the Greek language. 15

A second aspect of the recourse, somewhat imprecisely defined, was not pursued at the trial. It purported to question the implementation of the scheme of reorganisation, so far as relevant to the repositioning of applicant following the restructure of the service. This part of the recourse is, following its abandonment, dismissed. 20

Interpretation of a scheme of service—The Principle—Its application to the circumstances of this case:

Unlike statutes and documents, interpretation and construction of which is a matter of law, the interpretation of a scheme of service is governed by different considerations. It is a matter amenable to the discretion of the administrative authority concerned to apply it in the context of the fact-finding process designed to elicit the qualifications of candidates with a view to determining their eligibility and then suitability for appointment or promotion, as the case may be. And, it is reviewable as such. The acknowledgment of discretion to the administration in this area is, it seems to me, justified by the fact that they are in a unique position to appreciate its implications within the establishment of the service and apply it in a manner best conducive to promotion of the interests of the service. 25
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But the discretion is not absolute. It must, like every discretionary power, be reasonably exercised. They cannot place

an arbitrary interpretation on a scheme, nor put a construction upon it that violates or transgresses its provisions. The principle consistently emerging from a strong body of caselaw on the subject, is that the interpretation accorded to a scheme of service
5 by the appointing authority, will be sustained so long as it is one reasonably open to them by reference to the wording of the scheme. Such interpretation need not necessarily be the most obvious, or the one favoured by the Court. This being the principle, I shall proceed to examine whether it was reasonably
10 open to the respondents to construe the scheme as requiring, by necessary implication, adequate knowledge of the Greek language. I say "by necessary implication" for no such qualification is specifically required by the scheme. The only qualifications required are, long and successful service in the
15 position of Programme Officer "A", coupled with administrative and organisational abilities. As the post of Programme Officer "A" had been newly created, evidently this requirement related to their service in the position of Programme Officer. Counsel for the respondents submitted it was reasonably open to the
20 respondents to read into the scheme a requirement as to possession by candidates of a sound knowledge of Greek (Very Good), for the following reasons:

First, the post of Senior Programme Officer belonged to a section, entry to which necessitated, at a lower level, very good
25 knowledge of Greek. Although this interpretation is not one, as counsel acknowledged, immediately suggesting itself, it is not an interpretation that transcends the bounds of reason. I cannot agree. It is, in my view, a self-defeating argument; for, if knowledge of Greek was required as a prerequisite for
30 appointment to a lower rung in the ladder of the hierarchy, it was but natural to dispense with such requirement in filling posts, higher in the hierarchical ladder. It could be validly assumed that candidates eligible for promotion had the requisite knowledge of Greek, an assumption thoroughly justified in the
35 case of Programme Officers who could be deemed to have "a thorough command of Greek". The scheme of service for the post of Programme Officer* required, as an indispensable prerequisite for appointment, "a thorough command of Greek" (see, exhibit 5). Thus, no need arose to read into the scheme

* (Renamed or regraded as Programme Officer "A" after restructure).

under consideration a requirement relevant to knowledge of Greek for, all those eligible for promotion were deemed to possess such knowledge. Consequently, we can validly infer that omission to make reference, in the scheme of service, to knowledge of Greek, was done advisedly. There was no justification whatever for reading, in the circumstances of this case, into the scheme of service something not included therein. 5

Second, it was submitted that the scheme of service should be read and interpreted subject to the collective agreement entered into between the respondents, as employers and, the Union of Employees of the C.B.C. (see, exhibit 2). The argument runs that inasmuch as a distinction was made in the collective agreement between Radio Programmes, on the one hand and, Radio Programmes in foreign languages, on the other, it was natural to presume that this division was suggestive of an intention to require adequate knowledge of Greek on the part of officers preparing Greek programmes. To begin with, the division suggested is not firmly reflected in the collective agreement. More important still, is that the collective agreement is not at all concerned with the definition of the qualifications necessary for appointment to any of the posts enumerated therein. Preparation and approval of the schemes of service was exclusively the responsibility of the respondents. The scheme in question was approved after the execution of the collective agreement, in exercise of the powers of the Corporation at public law, unilaterally determining the qualifications necessary for promotion. The submission in this connection, rests on the assumption that a collective agreement can give rise to the creation of rights at public law. To that, a negative conclusive answer was given by the Full Bench of the Supreme Court, in *Kontemeniotis v. C.B.C.* (1982) 3 C.L.R. 1027, 1032. The significance of a collective agreement lay in the field of industrial relations. It is of no consequence in public law, unless its content is made part of the Regulations or practice of an administrative authority (see, also, judgment in *Droussiotis v. C.B.C.*, given on March 30, 1984, not yet reported).^{*} In this case, neither of the two happened. All that the evidence before me suggests, is that respondents became parties to the collective agreement (see, exhibit 2). 10
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In my judgment, the interpretation of the scheme of service, 40

^{*} Now reported in (1984) 3 C.L.R. 546.

adopted by the respondents in this case, was not one reasonably open to them. However, this is not the only reason for which the decision must be annulled. Even if we were to read into the scheme a requirement as to knowledge of Greek, the respondents singularly failed to carry out an inquiry into the knowledge of the applicant on the subject.

Application of the scheme of service:

Triantafyllides, P., pointed out in *Kapsou v. Republic* (1983) 3 C.L.R. 1336, that an appointing authority is under duty to carry out a specific inquiry into the qualifications of a candidate. This duty is not discharged by a mere purview of the matter. A substantive inquiry must be conducted to test the knowledge of a candidate in a particular language, where in doubt, usually taking the form of a written or other comprehensive examination sufficient to elicit such knowledge. In another case, notably that of *Athos G. Georghiadcs And Others v. Republic* (1967) 3 C.L.R. 653, the learned Judge drew attention to the fact that determination of the knowledge of candidate of a language, raises a substantive question that must be resolved as such.

Another equally instructive decision on the duties of an authority concerned to apply a scheme of service, is that of Stylianides, J., in *Mytides And Another v. Republic* (1983) 3 C.L.R. 1096. Their first duty is to ascertain the qualifications of a candidate in a particular subject. In the instant case, respondents totally failed to carry out this duty. Had they done so, they would have, no doubt, noticed the fact that applicant was born in Cyprus and lived most of her life in this country. Another palpable fact was that she was credited by the Board of the respondents as having "a thorough command of Greek" in virtue of her appointment as Programme Officer "A". Thirdly, she had translated a number of books from Greek to English for the Cyprus Broadcasting Corporation. To these qualifications they turned a blind eye.

The next stage in the process, as Stylianides, J. indicated in the above case, is to hold a comprehensive inquiry to determine whether the qualifications of the candidate satisfy the scheme of service. In essence, the appointing authority is required to apply the scheme to the particular circumstances of a candidate.

In the case under consideration, the respondents, as well as the Advisory Committee set up to advise them, failed to carry out any inquiry into the proficiency of the knowledge of applicant in Greek. They rested their decision on applicant's own rating of her knowledge in Greek, misquoting her statement at that, as well. She was excluded as candidate on the ground that, by her own rating, her knowledge of Greek was merely "Good". This is an inaccurate statement. In the application form, she was required to give an assessment of her knowledge in three respects: Ability to read, write and speak. Her answers were 'Excellent', 'Good' and 'Very Good', respectively. Consequently, they misconceived her own assessment of her knowledge of the language. As Triantafyllides, P. stressed in *Kapsou v. Republic*, knowledge of a particular language is a composite matter, referable to one's ability to write as well as use the language.

Mr. Polyviou candidly acknowledged, the respondents had a very difficult task to overcome in establishing the adequacy of the inquiry. A body of caselaw raises virtually insurmountable obstacles in the way of supporting the decision in this area. While counsel for the respondents put forward, in support of his case, every argument that could be legitimately raised on behalf of his clients, he did not omit, to his credit, to bring to the notice of the Court a number of decided cases that lend support to the case of his opponent.

On any view of the facts, the respondents totally failed in their duty to carry out an inquiry into the proficiency of the knowledge of the applicant in Greek. And this constitutes an additional reason for annulling the decision.

In the light of the above, there is only one alternative open to the Court and that is to set aside the sub judice decision. I so order.

It is with a degree of reluctance I shall refrain from adjudging the respondents to pay the costs of the proceedings. Let there be no order as to costs.

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