

1984 May 12

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRISTOS CHRISTOUDIAS,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondents.

(Cases Nos. 153/83 and 298/83).

Public Officers—Appointments and promotions—Departmental Committees—Recommendations—Powers of the Public Service Commission in relation thereto—Sections 5, 35 and 36 of the Public Service Law, 1967 (Law 33/67).

5 *Public Officers—Appointments—First entry post—Interview of candidates—Of especial importance in making selection for first entry posts—Nothing arbitrary on the part of the departmental Committee in attaching the importance they did to the results of the interview—Perfectly open to the departmental Committee, in*
10 *view of the material before them, including the qualifications of the candidates, their experience and the results of the interview, to recommend the interested parties, in preference to the applicant—Respondent Commission neither abdicated its duties nor exceeded its authority in accepting these recommendations.*

15 The applicant and 158 other persons were candidates for appointment to the post of Co-ordination Officer in the Planning Bureau, a first entry post. Their applications for appointment were considered and evaluated by a Departmental Committee, set up under section 36 of the Public Service Law, 1967 (Law
20 33/67) which, after interviewing the candidates, with a view to testing their knowledge and abilities, submitted to the Public Service Commission its report for consideration, wherein 16 of the candidates were recommended for appointment. The

report was accompanied by a lengthy appendix, detailing the qualifications and experience of the candidates; and in a separate appendix, they listed the qualifications, experience and grading, at the interview, of the 16 candidates that were recommended as suitable for appointment. The remaining candidates were rated as below "Good" at the interview; and as it is evident from their report, the Committee, attached considerable importance to the performance of the candidates at the interview. The Public Service Commission, after taking into consideration the recommendations of the departmental committee and making an appraisal of the material before them, bearing on the applicants, decided to restrict selection among those recommended by the committee. Applicant, who has not been recommended by the Departmental Committees, challenged by means of a recourse the decision to exclude him from consideration at the final stage of the selection process. The respondent Commission completed the selection by the choice of the 4 interested parties who were among the 16 recommended by the Departmental Committee. Hence a second recourse by the applicant directed against the substantive decision of the Commission.

Counsel for the applicant mainly contended:

- (a) That by adopting the recommendations of the departmental committee and omitting to call him to an interview, the Public Service Commission abdicated its duties and responsibilities under the Public Service Law, resulting eventually in a defective decision because of failure to carry out the duties cast upon them by law.
- (b) That the sub judge decision was invalid on account of failure of the respondent Commission to appreciate correctly the qualifications of applicant that entitled him to preference over the interested parties.

Held, (1) that as a matter of statutory law and proper administrative practice, neither the establishment of an advisory committee nor solicitation of its views on the suitability of candidates entails abdication of the substantive competence vested in the appointing body or divestiture of its powers; that the recommendations of the departmental Committees are not binding on the Public Service Commission (see section 36 of Law 33/67) and there was nothing in the decision of the Commission to

suggest they treated the recommendations as binding; and that they could accept them after a proper review of the material before them.

(2) That an oral interview is one of the accepted methods of testing the knowledge of candidates; that the results of such a test are of especial importance in making selections for first entry posts and they are less decisive when a selection has to be made among officers of long standing in the government service; that there was nothing arbitrary on the part of the departmental committee in attaching the importance they did to the results of the interview; that they were in an excellent position to appreciate the knowledge required for a successful discharge of the duties of the post and rate candidates with that perspective in mind and as their report and appendices attached thereto suggest, due regard was paid to the qualifications and experience of the candidates; that the applicant and all the other candidates not recommended, did poorly at the interview; that taking into consideration the personal files of the interested parties and the applicant, as well as the confidential reports on the applicant it was perfectly open to the departmental committee to conclude as they did, in view of the sum total of the material before them, including the qualifications of candidates, their experience and results of the interview and recommend the interested parties in preference to the applicant; that the Public Service Commission neither abdicated its duties nor exceeded its authority in accepting these recommendations; accordingly the recourses must fail.

Applications dismissed.

Cases referred to:

- 330 *Michael and Another v. Public Service Commission* (1982) 33 C.L.R. 726 (at pp. 740-741);
Papádoyulos v. Republic (1983) 33 C.L.R. 423;
Thalassinou v. Republic (1973) 33 C.L.R. 386;
Marathevtou v. Republic (1982) 33 C.L.R. 1088.

35 Recourses.

Recourses against the decision of the respondents to exclude applicant for consideration at the final stage of the selection process and against the promotion of the interested parties to

the post of Co-ordination Officer in the Planning Bureau in preference and instead of the applicant.

C. Loizou, for the applicant.

A. Papasavvas, Senior Counsel of the Republic, for the respondents.

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Cur. adv. vult.

PIKIS J. read the following judgment. In May 1982, the process was initiated for filling four posts of Co-ordination Officer in the Planning Bureau. The Public Service Commission directed on 31.5.1982 the advertisement of the post in the Official Gazette in view of its status, a first entry post. One hundred and fifty nine persons applied for appointment. Their applications were forwarded to a departmental committee, set up under s. 36 of the Public Service Law—33/67 and, Regulations made under the Law. Their applications were submitted to this committee for consideration and evaluation. In addition, they made available to the committee confidential reports on eight of the applicants who were in the government service (see, letter of 15 September, 1982).

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The departmental committee was composed of senior officers of the Department, meeting under the chairmanship of Mr. Aristidou, the Director of the Bureau. Because of its composition, it can be confidently assumed that the committee was in an excellent position to assess the requirements for a successful discharge of the duties of Co-ordination Officer and, make after proper enquiry, a forecast of the likelihood of the different candidates discharging with success the duties of the post. The applicants were invited to oral interviews with a view to testing their knowledge and abilities. Of the 159 candidates, 50 dropped out of the competition, either by withdrawing their applications or by not turning up at the interviews.

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After completing their deliberations, the departmental committee submitted to the Public Service Commission its report for consideration. The report was accompanied by a lengthy appendix, detailing the qualifications and experience of the candidates. In a separate appendix, they listed the qualifications, experience and grading, at the interview, of the 16 candidates that were recommended as suitable for appointment. The remaining candidates were rated as below "Good" at the inter-

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view. They attached, as it is evident from their report, considerable importance to the performance of the candidates at the interview. Before making their recommendations, they had, as it appears from their report dated 11.9.1982, regard to the
5 sum total of the material evidencing knowledge and capabilities of applicants, including, in the case of those in the government service, their confidential reports for the two years preceding the material period, notably 1980 and 1981. The Public Service
10 Commission, after taking stock of the recommendations of the departmental committee and making an appraisal of the material before them, bearing on the applicants, decided to restrict selection among those recommended by the committee (see, Minutes of the Meeting of 28.12.1982). Applicant mounted a challenge to the decision to exclude him for consideration at the final stage
15 of the selection process, by filing Recourse No. 158/83.

The selection was completed on 18.1.1983 by the choice of the four interested parties as the candidates best qualified for the post. They were among the 16 recommended by the departmental committee. A second recourse was filed by the applicant,
20 directed against the substantive decision of the Public Service Commission, joining the four appointees as interested parties.

Although the decision to exclude the applicant from final consideration is in itself justiciable, because of its definitive consequences upon the candidature of the applicant for appointment*, notwithstanding its inconclusiveness as to who should
25 be appointed, it would be profitless to examine the two applications separately. In any event, review of the final stage of a composite administrative act puts in issue every act antecedent thereto with the corollary that the legality and propriety of
30 every stage comes under scrutiny.

The basic submission propounded on behalf of the applicant is that by adopting the recommendations of the departmental committee and omitting to call him to an interview, the Public Service Commission abdicated its duties and responsibilities
35 under the Public Service Law, resulting eventually in a defective decision because of failure to carry out the duties cast upon them by law. Reliance in support of his submission was placed

* (See *Papadopoulos v. Republic* (1983) 3 C.L.R. 1423).

on the decision of A. Loizou, J., in *Michael And Another v. Public Service Commission* (1982) 3 C.L.R. 726, 740-741. I fail to see in what way the above decision supports the viewpoint put forward by counsel for the applicant. All that was decided in that case, so far as relevant to the case in hand, is that the Regulations governing the functioning of departmental boards should not be construed as taking away the competence and final responsibility of the Public Service Commission to select the candidates best suited for the post. The essence of the case for the applicant is that s.36 and the Regulations made purporting to give effect to it, must be read and construed subject to s.5 of the law entrusting the manning of public administration in the hands of the Public Service Commission. Section 36 should not be construed as authorising the Commission to act without first hand knowledge on the recommendations of any other body. Such a course would entail abdication of the duty cast on the respondents by the law, so it was argued.

The second complaint touching on the propriety of the decision concerns the sufficiency of the enquiry into the suitability of the candidates. This submission again turns on the acceptance by the Public Service Commission of the recommendations of the departmental committee. Finally, the decision is contested as invalid on account of failure to appreciate correctly the qualifications of applicant that entitled him to preference over the interested parties.

Counsel for the respondents asserted the validity of the final decision and the propriety of every step precedent thereto. The Public Service Commission was perfectly entitled to rely, after proper sifting of the material before them, on the recommendations of the departmental committee. Moreover, the recommendations rested, as may be inferred from the report of the departmental committee, on a proper appreciation of the facts before them. Counsel refuted every suggestion that the Public Service Commission abused its powers or that it transcended the outer limits of its discretion.

Recommendations of Departmental Committees—Powers of the Public Service Commission in relation thereto:

Reading together sections 5 and 36 of the Public Service Law -33/67, I fail to see any real or apparent conflict between their

provisions; on the contrary they are perfectly reconcilable. The competence of the Public Service Commission on appointments, promotions and in fact its authority to regulate the status of officers in the Public Service, is beyond doubt. The exercise
5 of the powers deriving from this competence is, by the express provisions of s.5 of the law, made dependent on observance of other provisions of the Public Service Law including, of course, those of s.36. So, as a matter of construction, there is no incongruity between the provisions of the two sections
10 of the law. Section 36 provides for the establishment of departmental committees to aid the Public Service Commission in the discharge of the duties and functions assigned to it by s.5. A comparison of the provisions of s.36(1) with those of s.35(6), reveals that unlike recommendations under s.36(1), those of
15 an advisory committee set up under s.35(1), are binding upon the Public Service Commission. Reference to s.35(1) is instructive in this sense. It was within the contemplation of the legislature to establish preliminary mechanisms for the evaluation of candidates as a means of filling the gap from lack of expertise
20 on the part of members of the Public Service Commission in detailed branches of knowledge. And in that way utilise accumulated knowledge of the permanent establishment in the selection process.

As A. Loizou, J. pointed out in *Thalassinos v. The Republic*
25 (1973) 3 C.L.R. 386, s.36 gives statutory effect to a perfectly acceptable practice followed in other countries, such as Greece, as a proper expedient for the exercise of the power to appoint. Thus, as a matter of statutory law and proper administrative practice, neither the establishment of an advisory committee
30 nor solicitation of its views on the suitability of candidates entails abdication of the substantive competence vested in the appointing body or divestiture of its powers (see, *Conclusions from the Jurisprudence of Greek Council of State 1929-59*, pp. 193-194).

35 Under section 36 the recommendations of the departmental committee are not binding on the Public Service Commission. There is nothing in the decision of the Public Service Commission to suggest they treated the recommendations as binding. On the other hand, they could accept them after proper review
40 of the material before them; and the question arises whether

in this case they erred in accepting them. The suggestion is they ought not to have accepted those recommendations in the case of the applicant, for the reason that the departmental committee wrongly excluded him from the list of recommended candidates. It becomes, therefore, necessary to examine the manner in which the departmental committee discharged these functions, as elicited from the material before the Public Service Commission. It was a first entry post, consequently, a thorough procedure should be devised for testing the knowledge of the candidates. Equality before the Administration, constitutionally entrenched by the provisions of Article 28.1 of the Constitution, requires that in the case of first entry posts, no presumption should be made in favour of those already in the government service. Their service record is relevant as a pointer to their experience and capabilities, in much the same way as the service record of candidates with experience outside the government service should be evaluated. The interested parties were in the government service on a temporary basis. No confidential reports were submitted on their performance. Thus, no comparison could be made in this respect with the applicant who was permanently in the government service. The personal file and confidential reports of the applicant which were exhibits 2(a) and 2(b) in Recourse 145/83, were duly secured and considered for the purpose of disposing of this recourse.

An oral interview is one of the accepted methods of testing the knowledge of candidates (see, inter alia, *Marathevtou And Others v. Republic* (1982) 3 C.L.R. 1088). The results of such a test are of especial importance in making selections for first entry posts. They are less decisive when a selection has to be made among officers of long standing in the government service. In their case the results of an interview must be evaluated together with the service record of the parties in order to ascertain their suitability for appointment (see, *Papadopoulos v. Republic* (1983) 3 C.L.R. 1423).

There was nothing arbitrary on the part of the departmental committee in attaching the importance they did to the results of the interview. They were in an excellent position to appreciate the knowledge required for a successful discharge of the duties of the post and rate candidates with that perspective in mind. As their report and appendices attached thereto suggest,

due regard was paid to the qualifications and experience of the candidates. The applicant and all the other candidates not recommended, did poorly at the interview. They were rated as being below "Good".

- 5 I studied with very great care the personal files of the interested parties and the applicant, as well as the confidential reports on the applicant. It was perfectly open to the departmental committee to conclude, as they did, in view of the sum total of the material before them, including the qualifications of
10 candidates, their experience and results of the interview and recommend the interested parties in preference to the applicant. The Public Service Commission neither abdicated its duties nor exceeded its authority in accepting these recommendations. It was perfectly open to them to do so and nothing produced
15 before me suggests otherwise.

In the result, the recourse is dismissed. Let there be no order as to costs.

Recourse dismissed with no order as to costs.