

1984 July 6

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ACHILLEAS KALAITZIS,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondents.*

(Case No. 453/83).

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ELENI D. CONSTANTINOU,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondents.*

(Case No. 473/83).

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*Public Officers—Promotions—Merit is the first and foremost consideration—Additional qualifications to those envisaged by the schemes of service—Effect—Seniority—It becomes prominent only if the candidates balance equally on merit and qualifications—*  
5 *Recommendations of Head of Department—A good reason for the choice of a candidate with less academic qualifications.*

These recourses were directed against the validity of the promotion of the two interested parties to the post of Senior Radiographer in preference to and instead of the applicants.

10 Applicant Constantinou was senior to the two interested parties but the confidential reports of the latter were by far better. The qualifications of the interested parties were at least com-

parable to those of this applicant, if not better, especially those of interested party Nicolaidou. Applicant Kalaitzis had better qualifications than interested party Kaplani and marginally better than interested party Nicolaidou but both the latter were senior to him and they had a slight edge over him regarding merit. Both the interested parties were recommended for promotion by the Head of Department but applicants were not so recommended. 5

*Held*, that merit is the first and foremost consideration for the manning of the public service; that seniority is the least consequential factor in the selection process and it becomes prominent only if the candidates balance equally on the first two factors, merit and qualifications; that additional qualifications to those envisaged by the schemes of service, unless singled out by the scheme of service as a specific advantage are not in themselves decisive or a distinct consideration to which the appointing body should have regard but merely one other factor that should be pondered in the context of the overall evaluation of the suitability of a candidate for promotion; that the recommendations of the Head of Department offer good reason for the choice of a candidate with less academic qualifications than other candidates; that it was for the Public Service Commission to balance the suitability of candidates for promotion and make a choice best designed to serve the interests of the public service; that in the light of the material before them, it was, at the least, reasonably open to them to choose the interested parties; and that, accordingly, the recourses must fail. 10 15 20 25

*Applications dismissed.*

Cases referred to:

- Christoudias v. Republic* (1984) 3 C.L.R. 657; 30  
*Georghiou v. Republic* (1974) 3 C.L.R. 74;  
*Kleanthous v. Republic* (1978) 3 C.L.R. 320;  
*Larkos v. Republic* (1982) 3 C.L.R. 513;  
*Tokkas v. Republic* (1983) 3 C.L.R. 361;  
*Skarparis v. Republic* (1978) 3 C.L.R. 106 at p. 116. 35

**Recourses.**

Recourses against the decision of the respondents to promote

the interested parties to the post of Senior Radiographer (Radiodiagnostic) in preference and instead of the applicants.

A. S. Angelides, for applicant in Recourse No. 453/83.

A. Magos, for applicant in recourse No. 473/83.

5 A. Vladimirov, for respondents.

N. Zomenis, for interested party Maria Nicolaidou.

*Cur. adv. vult.*

10 PIKIS J. read the following judgment. Like many cases of review of administrative action, the present recourses revolve round the exercise of the discretionary powers of the Public Service Commission. We are required to decide whether the P.S.C. exceeded its powers by adopting a course not open to it or abused its powers by invoking them for a purpose extraneous to the law or the proper needs of the Administration. The facts of the case are fairly simple and may be recited without much effort.

20 Two posts of Senior Radiographer (Radiodiagnostic) were opened for promotion in the Medical and Public Health Department. The process was duly initiated for the filling of the vacancies.

The scheme of service postulated the following two qualifications for appointment: (a) Five years service as Radiographer (or Assistant Radiographer, a position apparently abolished), and (b) Very good knowledge of Greek and English.

25 A Departmental Committee of Senior Medical Officers under the Chairmanship of the Director of Medical Services was set up under section 36 of Law 33/67 to sift the list of candidates for promotion, determine their eligibility and lastly evaluate their suitability for appointment. Of the 37 candidates, 31 were found to be eligible, that is, they possessed the qualifications envisaged by the schemes of service. Thereafter, the Committee examined the suitability of the candidates for appointment on a comparison of their relative worth, deriving from their service record. Eight of them were recommended as best suited for promotion. The list of recommended candidates included the two interested parties, namely, Maria Nicolaidou and Ioanna Kaplani, and one of the applicants in these proceedings, Achilles Kalaitzis. Specific reference is made to the reasons for the non-inclusion of Eleni Constantinou, the other applicant in these:

proceedings, in the list of recommendees. Notwithstanding the length of her service, she was lowly rated in her confidential reports in comparison to the candidates recommended.

On being furnished with the recommendations of the Departmental Committee, the P.S.C. examined the filling of the posts at two stages. First, it appraised the recommendations of the Departmental Committee in order to decide for itself who should be included in the final list of candidates (see minutes of 9th July, 1983). This was the proper procedure to follow for the P.S.C. remained the ultimate arbiters of who should be included in the final list of candidates. The recommendations of the Departmental Committee in this respect, weighty though they are, are not binding on the Commission (see, *Christoudias v. Republic* - delivered on 12.5.84 - to be reported).\*

After due consideration of the report of the Departmental Committee and the material shedding light on the capabilities of the candidates, they decided to add two more candidates to the list of candidates submitted by the Departmental Committee. At the adjourned meeting of 23rd August, 1983, they heard initially the views of the Departmental Head, Mr. Markides, the Director of Medical Services, and then proceeded to make the selection of the candidates to be appointed. They chose the interested parties, a choice coinciding with the recommendations of Mr. Markides.

In recommending the interested parties, the Director did not confine himself to a mere indication of his preference but gave the reasons that led him to recommend the two interested parties. His reasons may be summed up this way: Maria Nicolaidou was an altogether outstanding candidate and was recommended as his first choice. Ioanna Kaplani was an officer with a long and successful career in the Department of Radiography, with very valuable experience in her field. His evaluation of their worth is consonant with their service record and confidential reports.

The P.S.C. selected, as stated in their decision, the interested parties after due consideration of the material before them bearing on the candidates and application of the criteria set by

\* Now reported in (1984) 3 C.L.R. 657.

law for the evaluation of their suitability, that is, merit, qualifications and seniority.

The sole issue before us is whether this decision was reasonably open to them. Having studied every aspect of the case and the addresses of counsel, my answer is in the affirmative. My reasons are given below:-

*Eleni Constantinou*

Comparison of the confidential reports of Eleni Constantinou with those of the interested parties reveals that the reports of the latter were by far better; the superiority of the interested parties in this respect was manifest. The assessment of the Departmental Committee made in this area was well founded. Given their confidential reports it would be inconceivable for the Director to recommend Eleni Constantinou in preference to either of the interested parties.

It is hardly necessary to pursue the comparison further for we have it in the law that merit is the first and foremost consideration for the manning of the public service. And numerous decisions of the Courts confirm this position, so unequivocally that it is unnecessary to refer to any individual decision affirming this principle as a fundamental rule of administrative law. The academic qualifications of the interested parties were, on any view at least comparable to those of Eleni Constantinou, if not better, especially those of Maria Nicolaidou.

Only in terms of seniority did Eleni Constantinou excel over one of the interested parties, Maria Nicolaidou, while she was junior to Ioanna Kaplani. Seniority is the least consequential factor in the selection process; it becomes prominent only if the candidates balance equally on the first two factors, merit and qualifications. Hence, I conclude, as indicated, that it was not only reasonably open to the P.S.C. to choose the interested parties in preference to Eleni Constantinou but inevitable on evaluation of the data defining their suitability for promotion.

*Achilleas Kalaitzis*

The case of Kalaitzis merits closer study for on any survey of his service record he was an excellent Radiographer with impressive academic qualifications. How did he compare with the interested parties, to begin with in terms of merit as

evidenced by their confidential reports. On a review of the totality of their service record in this area, the interested parties had a slight edge over Kalaitzis. So far as the records before me reveal, reproduced in the address of counsel for the Republic, Ioanna Kaplani had an overall rating of "excellent" continuously since 1965. Maria Nicolaidou had a like rating since 1971. Both had an annual excellent rating since they occupied the position of Radiographer, the stepping stone to their promotion. Kalaitzis had an annual overall rating of "excellent" since 1977 but a rating of "very good" for the years 1975 and 1976. It is both relevant and necessary to have regard to the career of an officer as a whole in order to evaluate his worth (*Odysseas Georghiou v. The Republic* (1974) 3 C.L.R. p. 74). This exercise is up to reveal a multitude of traits in the personality, ability and performance of an officer and as it is ordinarily the case, the bigger the sample the more likely it is to disclose an objective view of a matter. That is not to suggest that one should underestimate the importance of reports for recent years and their value as an indicator of present trends in the performance of an officer. Here we may note that Kalaitzis for the year 1982 was rated as "excellent" on 10 items, whereas Maria Nicolaidou on 9, and Ioanna Kaplani on 8. On the other hand, for the year 1981 Kalaitzis had an "excellent" rating on 7 items, whereas each one of the interested parties had an "excellent" rating on 10 items.

In terms of academic qualifications one may infer from the comparison of the list of his qualifications with those of interested parties, that he had better qualifications than Ioanna Kaplani and marginally better than Maria Nicolaidou. Additional academic qualifications to those envisaged by the schemes of service, unless singled out by the scheme of service as a specific advantage, are not in themselves decisive or a distinct consideration to which the appointing body should have regard but merely one other factor that should be pondered in the context of the overall evaluation of the suitability of a candidate for promotion (see, inter alia, *Kleanthous v. The Republic* (1978) 3 C.L.R. 320; *Larkos v. The Republic* (1982) 3 C.L.R. 513; *Tokkas v. The Republic* (1983) 3 C.L.R. 361).

In terms of length of service the interested parties were senior to the applicant; the seniority of Ioanna Kaplani was overwhelming.

The recommendations of a departmental head carry considerable weight because he is in a unique position to evaluate in the correct perspective the competing merits of the candidates, on the one hand, and appreciate the needs of the post to be filled, in terms of ability, knowledge and experience of the beholder, on the other. In *Skarparis v. The Republic* (1978) 3 C.L.R., 106, 116, Triantafyllides, P., pointed out that the recommendations of a Ministry offered good reason for the choice of a candidate with less academic qualifications than other candidates.

Ultimately, it was for the P.S.C. to balance the suitability of candidates for promotion and make a choice best designed to serve the interests of the public service. In the light of the material before them, it was, at the least, reasonably open to them to choose the interested parties. To my comprehension, this choice was an obvious one.

For the reasons indicated in this judgment, the recourses fail. They are dismissed. Let there be no order as to costs.

*Recourses dismissed. No order as to costs.*