

1985 December 2

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

CHRISTOS K. POLYCARPOU AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Cases Nos. 275/71, 338/71, 343/71, 346/71).

5 *Public Officers—Promotions—Head of Department setting up
a Board consisting of himself and five senior Officers for
the purpose of achieving uniformity in the rating of the
suitability of candidates—In the circumstances said action
not illegal—When there is a great number of candidates
for promotion serving scattered all over the Republic it
is imperative for the Head of the Department to seek the
views of senior officers under whom the candidates serve
as it is humanly impossible for him to have personal know-
10 ledge of their performance.*

The Public Service Law 33/67 ss. 43(3) and 44(1)(b).

15 *By the above recourses, which were heard together, as
they attack the same administrative act, the applicants
challenge the promotion and/or secondment of the inter-
ested parties to the post of Land Clerk 1st Grade, which
is a promotion post from the immediately lower post of
Land Clerk 2nd Grade.*

20 *By letter dated 1.5.71 the Director of Lands and Sur-
veys informed the Chairman of the respondent Commission
that, as the candidates for promotion are serving in dif-
ferent Branches and in order to ensure uniformity in the
rating of their suitability, he had set up a Board consisting*

of five senior Land Officers and of the Director himself with a view to making a fair comparison between the candidates. The findings of the Board were enclosed in the said letter.

Having considered the merits, qualifications, seniority and experience of the candidates for the said post and having in mind the recommendations submitted by the Director by his said letter the respondent Commission proceeded and seconded with effect as from 1.6.71 17 persons to the Temporary (Dev.) Post of Land Clerk 1st Grade.

The grounds of law on which the above recourses are based, as argued by counsel for applicants, may be summarised as follows:

1. That the Director of Lands and Surveys by setting up the Departmental Board delegated his powers thus acting contrary to section 43(3) of the Public Service Law of 1967, which provides that the recommendations to the Public Service Commission in respect of promotion should be made by the Head of Department in which the vacancy exists.

2. That in effecting the promotions the respondent Commission failed to select the applicants as the best candidates, and

3. That the decision to promote the interested parties instead of the applicants is not duly reasoned.

All interested parties in recourse 275/71 have better confidential reports than the applicant, who, however, is senior by 17½ months to some of the interested parties.

All interested parties in recourse 347/71 have better confidential reports than the applicant, who, however, is senior by 17½ months to some of them.

All interested parties in recourse 346/71 have better confidential reports than the applicant, who is senior to some of them by 17½ months. Three of the interested parties are senior to the applicant.

It should be noted that recourse 338/71 was withdrawn and dismissed.

Held, dismissing the recourses:

(1) There is no merit in the submission of counsel for the applicants relating to the alleged delegation of powers by the Director to the Board, which had been set up by the Director himself. In cases where due to the great number of candidates who are serving scattered all over the Republic it is humanly impossible for the Head of the Department to have full personal knowledge of their performance at work, not only the Head of the Department is not acting contrary to law, but it is imperative of him to seek and obtain the views of higher officers under whom the said candidates carry out their duties.

(2) It is clear that all interested parties were superior to the applicants as regards merit and had better recommendations from the Head of the Department. Seniority is a decisive factor only when merit and qualifications are more or less equal. This is not the case in the present instances as far as merit is concerned. The sub judice promotions were, therefore, reasonably open to the respondent Commission.

(3) A mere perusal of the minutes of the respondent Commission dated 3.5.71 makes it abundantly clear that the sub judice decision is duly reasoned.

Recourses dismissed.

No order as to costs.

Cases referred to:

Chrysochos v The Republic (1985) 3 C.L.R. 78.

Recourses.

Recourses against the decision of the respondent whereby the interested parties were promoted and/or seconded to the post of Land Clerk, 1st Grade, in the Department of Lands and Surveys in preference and instead of the applicants.

L. Papaphilippou, for applicants in Cases Nos. 275/71, 338/71 and 343/71.

M. Vassiliou, for applicant in Case No. 346/71.

N. Charalambous, Senior Counsel of the Republic,
for the respondents.

E. Lemonaris, for interested parties *S. Koundouriotis*,
A. Pipis and *E. Makrides*.

Cur. adv. vult. 5

MALACHTOS J. read the following judgment. In these re-
courses, which were heard together, as they attack the same
administrative act, the applicants apply for a declaration of
the Court that the act and/or decision of the respondents
of the 3rd May, 1971, by which the interested parties were
promoted and/or seconded to the post of Land Clerk, 1st
Grade, instead of the applicants, is null and void and of no
legal effect whatsoever. 10

The post of Land Clerk, 1st Grade, is a promotion post
from the immediately lower post of Land Clerk, 2nd Grade, 15
and according to the relevant scheme of service, which was
approved by the Council of Ministers on the 27th March,
1971, Decision No. 10.355, candidates must have passed
the departmental examinations.

The relevant facts of the case are the following: 20

By letter dated 22nd September, 1970, the Director-
General of the Ministry of Finance informed the Chairman
of the Public Service Commission that the Minister gave
his approval for the filling of all vacant posts in the De-
partment of Lands and Surveys, including any consequen- 25
tial vacancies. In his said letter the Director-General stated
that as regards the post of Land Clerk, 1st Grade, it might
be filled as soon as the relevant scheme of service, then be-
fore the joint Staff Committee, was approved.

At its meeting of 7th October, 1970, the Commission 30
considered the request for the filling of the vacancies and
decided, inter alia, that 8 temporary (Dev.) vacancies in the
post of Land Clerk, 1st Grade, could not be filled until
the relevant scheme of service for the post had been ap-
proved or revised. 35

This scheme of service for the post of Land Clerk, 1st

Grade, was approved by the Council of Ministers on 27th March 1971 by Decision No. 10.355.

At its meeting of 21st April, 1971, the Commission decided that the 8 vacant posts of Land Clerk 1st Grade, be considered on 3rd May, 1971. On the 3rd May, 1971, the Commission in the presence of the Director of the Department of Lands and Surveys, considered the filling of 35 vacancies in the post of Land Clerk 1st Grade as follows:

- (i) 27 consequential vacancies which were created as a result of the promotion or secondment of an equal number of officers to the post of Assistant Land Officer; and,
- (ii) the 8 temporary (Dev.) vacancies, referred to herein-above.

In accordance, however, with the 1970 Estimates, 8 permanent posts of Land Clerk 1st Grade were abolished, i.e. the establishment was reduced from 41 to 33 posts. In view of this there were eight supernumerary appointments in the permanent post and, therefore, only 27 out of 35 vacancies could be filled.

The position as regards the 27 vacancies was as follows:

- (i) 15 permanent,
- (ii) 4 permanent (on secondment) and
- (iii) 8 temporary (Dev.)

According to the relevant minutes the Commission considered the merits, qualifications, seniority and experience of all the officers holding on secondment the temporary (Dev.) posts of Land Clerk 1st Grade. The Commission considered, at the same time, the merits, qualifications, seniority and experience of all eligible Land Clerks, 2nd Grade. The personal files and the annual confidential reports of all the above officers were taken into consideration.

With regard to the candidates the Director of the Department of Lands and Surveys stated as follows:

"P. Eracleous: Although he suffers from his nerves,

he is very suitable. Ph. Nicolaou: He is slightly better than the others in valuation.

As regards Mr. J. Galiniotis, the Commission observed that this officer has been rated as most suitable.

Having regard to his annual confidential reports and his seniority, the Commission believes that the rating of this officer is rather high. 5

Bearing in mind the above, as well as the recommendations submitted by the Director of the Department of Lands and Surveys in his letter No. 495/57/6 of 1.5.71 the Commission decided that - 10

(i)

(ii)

(iii)

(iv) the following officers holding the post of Land Clerk, 2nd Grade, be seconded to the Temporary (Dev.) post of Land Clerk, 1st Grade, with effect from 1.6.71: 15

1. Eft. Adamou, 2. C. Kyriakou, 3. Mar. Gavalas, 4. J. Galiniotis, 5. Ph. Varnavides, 6. P. Christodoulides, 7. St. Theodoulou, 8. Ant. Chr. Savva, 9. Kyr. Kyriakides, 10. Sot. Koundouriotis, 11. Pan. Hadjisoteriou, 12. Kyr. Aristotelous, 13. Andr. Pipis, 14. J. Komodromos, 15. E. M. Makrides, 16. I. Constantinides; and 17. A. Antoniadis." 20

These promotions were published in the Cyprus Gazette on the 2nd July, 1971. 25

The letter of the Director of Lands and Surveys of the 1st May, 1971, to the Chairman of the respondent Commission, reads as follows:

"Please refer to your letter No. 53/70 of the 22nd April, 1971, asking me to be present at the meeting by the Public Service Commission to be held on the 3rd May, 1971, in connection with the filling of the vacancies in certain posts in this department. 30

2. The candidates for promotion to the post in question are serving in different branches of the depart- 35

ment and in order to ensure a uniformity in the rating of the suitability of each candidate or promotion I set up a Board consisting of five senior Land Officers and myself with a view to making a fair comparison between the candidates of each grade. The findings of the Board are contained in the enclosed statements in the hope that they will prove useful to the Commission in its work. In doing so, I wish to make it clear that this should not be taken as an attempt of the department to interfere in any way with the duties of the Commission.

5. I shall be at the Commission's disposal at its meeting in question to give any explanations that may be necessary in the course of that meeting".

It should be noted here that Recourse No. 338/71, was, on 6.9.73, on the application of counsel for applicant and with the leave of the Court, dismissed as withdrawn.

The grounds of law on which these recourses are based, as argued by counsel for applicants, may be summarised as follows:

1. That the Director of Lands and Surveys by setting up the *Departmental Board* delegated his powers thus acting contrary to section 43(3) of the Public Service Law of 1967, which provides that the recommendations to the Public Service Commission in respect of promotion should be made by the Head of Department in which the vacancy exists,

2. That in effecting the promotions the respondent Commission failed to select the applicants as the best candidates. and

3. That the decision to promote the interested parties instead of the applicants is not duly reasoned.

It has been submitted by counsel for applicants that the recommendations as to the suitability of each candidate for promotion is vested under section 44(1) (b) of the Public Service Law of 1967 to his reporting officer and under section 44(3) to the Director of the department concerned.

In the present case, according always to the submission

of counsel for applicants, the Director by setting up a departmental Board delegated his powers to the said Board. thus, acting contrary to law.

I must say straight away that I find no merit in this submission of counsel. I must further say that in cases like the one in hand, where due to the great number of candidates who are serving scattered all over the Republic, it is humanly impossible for the Head of the Department to have full personal knowledge of the performance at work of each candidate and so not only the Director is not acting contrary to law but it is imperative for him to seek and obtain the views of higher officers under whom the said candidates carry out their duties.

Useful reference may be made in this respect to the case of *Eleftherios Chrysochos v. The Republic*, (1985) 3 C.L.R. 78, at page 86, where it is stated that it is not imperative for a reporting officer to have direct knowledge of every item as regards the performance of his subordinates but he may obtain information from any other proper source.

As regards the second ground of law the question that falls for consideration is that of merit and seniority because as regards qualifications all the applicants and the interested parties are more or less the same.

In Recourse No. 275/71, the applicant, Christos Polycarpou, attacks the secondment to the Temporary (Dev.) Post of Land Clerk, 1st Grade, in all twelve interested parties i.e. No. 4 to 15, both inclusive. All these interested parties have better confidential reports than the applicant. Interested parties Nos. 4, 5, 6, 7, 8 and 9 have in substance the same seniority with the applicant all being promoted to Land Clerk 2nd Grade, on 16.2.62. The applicant is senior to all the other interested parties, namely, Nos. 10, 11, 12, 13, 14 and 15 by 17½ months. These interested parties were promoted to Land Clerk 2nd Grade on 1.8.63.

In Recourse No. 343/71, the applicant, Christodoulos Hji Vassiliou, attacks the secondment to the Temporary (Dev.) Post of Land Clerk, 1st Grade, of the same twelve interested parties as in Recourse No. 275/71. All interested parties in this Recourse have better confidential reports than

the applicant. This applicant was also promoted to Land Clerk 2nd Grade on 16.2.62 and so he has in substance the same seniority with interested parties Nos. 4, 5, 6, 7, 8 and 9 and he is senior to all the other interested parties, namely, 5 Nos. 10, 11, 12, 13, 14 and 15 by 17½ months.

In Recourse No. 346/71, the applicant, Christakis Papadopoulos, attacks the secondment to the Temporary (Dev.) Post of Land Clerk 1st Grade, fourteen interested parties. i.e. Nos. 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 10 and 17. All interested parties in this Recourse have better confidential reports than the applicant. This applicant was promoted to Land Clerk, 2nd Grade, on 16.2.62. Interested parties No. 2 and 17 were promoted to Land Clerk 2nd Grade, on 1.12.58, whereas interested party No. 16 was 15 promoted to Land Clerk 2nd Grade on 1.8.58. So, these three interested parties are also senior to the applicant.

Interested parties Nos. 4, 5, 7, 8 and 9 have in substance the same seniority like the applicant, whereas the applicant is senior to interested parties Nos. 10 to 15 by 17½ months.

20 The Director of the Department in his written recommendations contained in his letter of 1.5.71, addressed to the Public Service Commission described the three applicants as "suitable" for promotion whereas the interested parties were described as "most suitable" and/or "suitable plus". 25

It is clear from the above that all the interested parties were superior to the applicants as regards merit and, furthermore, they had better recommendations from the Head of the Department. As regards seniority, the applicants were 30 senior to some of the interested parties, namely, interested parties Nos. 10 to 15, inclusive.

It was, therefore, open to the respondent Commission, taking into consideration all the relevant factors, to reach the decision complained of and promote the interested parties instead of the applicants. Needless to say that seniority 35 is a decisive factor only when the factors of merit and qualifications are more or less equal. This is not the case in the present Recourse.

Lastly, as regards the submission of counsel for applicants that the decision of the respondent Commission is not duly reasoned, I am of the view that it cannot stand either. A mere perusal of the Minutes of the meeting of the respondent Commission of the 3rd May, 1971, makes it abundantly clear that the decision complained of is duly reasoned. In the said minutes it is clearly stated that the Commission having considered the merits, qualifications, seniority and experience of all eligible Land Clerks, 2nd Grade, the contents of the personal files and the annual confidential reports of all the above mentioned officers, the recommendations contained in the letter of 1.5.71, which was addressed to the Commission by the Director of the Department of Lands and Surveys and the views expressed during the interview on each one of the candidates by the Director of the Department of Lands and Surveys who was present, the Commission decided that the interested parties were, on the whole, better than the applicants.

For the reasons stated above, these recourses fail and are hereby dismissed, with no order as to costs.

*Recourses dismissed.
No order as to costs.*