

1985 December 31

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

KLITOS IOANNIDES.

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Cases Nos. 573/84 and 631/84).

Public Officers—Appointments—“Striking” superiority—Meaning of—Bias—Allegation that the Director of the Department who expressed his views to the respondent Commission was biased against the applicant—To establish bias, facts must be established making it objectively unjust for one to report on another—Performance at interviews—In cases of first appointments greater importance may be attached to such performance. 5

The above two recourses are directed against the decisions to appoint the seven interested parties to the position of Researcher at the Centre of Scientific Research (First Entry Posts). 10

Both the interested parties and the applicant were recommended by the Departmental Board and had served for a time on a temporary basis or secondment at the said Centre and were on that account known to the Director of the Centre. 15

The Director of the Centre made an assessment of their performance at the interview before the P.S.C. and an evaluation of their qualifications, achievements and suitability for appointment. Some candidates, in particular in- 20

terested parties Ionas, Constantinides and Theocharides were in his opinion more suitable for appointment, whereas his assessment of the remaining interested parties and the applicant was more or less equal.

5 The respondent Commission having considered the matter appointed the interested parties, except interested party Theocharides. But when one of the persons so appointed namely Michaelina Kefala declined the offer, the P.S.C. reconvened and chose interested party Theocharides.

10 The applicant's complaints are: (a) Disregard of his striking superiority over the interested parties, (b) Bias of the Director, (c) Attachment of undue weight to the performance of candidates at the interview (d) Ineligibility of interested party Loizidou for lack of qualification specified
15 in the scheme of service, namely lack of publication(s) evidencing scientific accomplishment.

Held, dismissing the recourses:

(1) To qualify as "striking" the superiority must be glaring and as such objectively identifiable. It must be
20 self-evident of itself suggestive of abuse of power on the part of anyone ignoring it. Judicial action aims at the review of legality, not the correctness of the decision from the subjective view point of the Court; subjective evaluation lies with the administration. The applicant failed to
25 establish a case of a "striking" superiority.

(2) To establish bias in this connection, facts must be established making it objectively unjust for one to report on another. Though such facts may take a variety of
30 forms, they must invariably offend against basic notions of fairness. There is nothing in this case suggesting bias on the part of the Director.

(3) In cases of first appointment greater importance may be attached to performance at interviews. There is nothing to show that the respondents attached inordinate im-
35 portance to the performance of the candidates at the interview.

(4) The relevant part of the scheme of service for the

post provides "application in scientific research evidenced, if possible, by one or more publications". Therefore, publications are envisaged as evidence not as a prerequisite for appointment. In any event interested party Loizidou is the author of a doctoral thesis leading to the award of a Ph. D. Objections, therefore, as to her eligibility cannot stand. 5

Recourses dismissed.

No order as to costs.

Cases referred to: 10

Hadjisavva v. The Republic (1982) 3 C.L.R. 76;

Hadjoannou v. The Republic (1983) 3 C.L.R. 1041;

Spanos v. The Republic (1985) 3 C.L.R. 1826;

Soteriadou and Others v. The Republic (1985) 3 C.L.R. 300;

Kontemeniotis v. C.B.C. (1982) 3 C.L.R. 1027; 15

Christoudias v. The Republic (1983) 3 C.L.R. 622.

Recourse.

Recourse against the decision of the respondent to appoint the interested parties to the post of Researcher at the Centre of Scientific Research in preference and instead of the applicant. 20

Chr. Kitromilides, for the applicant.

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

Cur adv. vult. 25

PIKIS J. read the following judgment. The two recourses are directed against the decisions of the Public Service Commission to appoint the seven interested parties to the position of Researcher at the Centre of Scientific Research. The decisions were taken at two stages as one of the candidates first selected, namely, Michaelina Kephala, rejected the offer of appointment notwithstanding her initial interest. 30

5 The advertisement of the posts in the official Gazette⁽¹⁾ drew 80 applications from persons claiming to possess the qualifications envisaged by the scheme of service. The applications were referred to a Departmental Board, presided
10 over by the Head of the Centre, for screening and initial assessment. On the conclusion of their inquiry and deliberations, they recommended 16 candidates as suitable for appointment including the interested parties and applicant. Both the interested parties and the applicant had served
15 for a time on a temporary basis or secondment at the Centre and were, on account of that, known to the Director. In consequence, the Director was in a relatively better position to comment on their suitability for appointment compared to other candidates.

15 After completion of the initial cycle of inquiries the respondents interviewed the recommended candidates in the presence of the Director of the Centre. Mr. Kyrris made an assessment of their performance at the interview and an evaluation of their qualifications, achievements and
20 suitability for appointment. Although he did not recommend candidates for appointment in any order of priority, it is clear from the content of his recommendations that some candidates, in particular interested parties Ioannis Ioannas, Costas Constantinides and Ioannis Theocharides were,
25 in his opinion, more suitable for appointment, whereas his assessment of the remaining interested parties and applicant was more or less equal.

30 Thereafter the respondents very diligently made an evaluation of their own of the performance of the candidates at the interview taking into consideration the views of the Director as well. Finally they addressed themselves to the merits of the parties on a consideration of the material before them, an exercise that led them to the appointment of the interested parties other than interested party Theocharides. When Michaelina Kephala declined the offer, they
35 reconvened and chose, after due consideration of the material before them, including the candidature of the applicant, interested party Theocharides.

(1) Being first entry posts they had to be advertised

The decision is challenged on the following grounds:-

- (a) Disregard of the striking superiority of the applicant over the interested parties. His qualifications, achievement at work and publications allegedly made him unquestionably superior to the other contestants. 5
- (b) Bias of the Director. It is the case of the applicant that the Director was biased against him and therefore failed to make, on account of this predisposition, a fair assessment of his qualifications and worth. Allegations of bias are supported by inconsistencies attributed to the Director in the assessment of applicant's capabilities. The retention of his services at the Centre, on the advice of the Director, after his non appointment evidences, in applicant's contention, a contradictory stand suggestive of bias on his part. 10 15
- (c) Attachment of undue weight to the performance of the candidates at the interview.
- (d) Ineligibility of one of the interested parties, namely, Anna Loizidou, for lack of one of the qualifications specified in the scheme of service, namely, lack of publication or publications evidencing scientific accomplishment. 20
- (e) Abuse and excess of power. This ground divorced from the above-mentioned specific complaints cannot stand the test of scrutiny for the respondents carefully followed the procedure ordained by law and rules of sound administration in making their selection and addressed themselves to every relevant consideration before making their choice. For these reasons I shall concern myself no further with this contention except in conjunction with the specific complaints enumerated above. 25 30

Having duly reflected on the issues raised, examined in the light of the material before me, I have come to the following conclusions:- 35

(A) *Striking Superiority*

A body of caselaw establishes that to make out a

5 case of striking superiority, the superiority must be self-evident of itself suggestive of abuse of power on the part of anyone ignoring it (1). To qualify as "striking" superiority must be glaring and as such objectively identifiable.

10 Examination of the qualifications and accomplishments of applicant and interested parties, suggests that all of them are highly accomplished scientists in their field. That I might have chosen the applicant in preference to some of the interested parties, had I been the appointing body, is no ground for interference with the decision reached. Judicial action aims at the review of legality, not the correctness of the decision from the subjective view point of the Court. In law 15 it is the domain of the administrative body charged with the duty to make appointments in the public service to select those best suitable for appointment; subjective evaluation lies with them. I find no ground here upon which to interfere with the sub judice decision; it was reasonably open to the respondents to 20 appoint the interested parties.

(B) *Bias*

25 To establish bias in this connection, facts must be established making it objectively unjust for one to report upon another. Facts giving rise to bias may take a variety of forms; but invariably to establish a case of bias they must offend basic notions of fairness, in particular fair play in this area. An instance of bias is furnished by the case of *Soteriadou and Others v. The Republic*(2), where the acrimony between superior and subordinate and their relationship was such as to make it objectively unfair for the former to pass judgment on the latter. Friction or for that matter strained relationship at work cannot of itself establish bias as decided in the case of *Kontemeniotis v. C.B.C.* (3). 30 35

(1) *Hadjisavva v. The Republic* (1982) 3 C.L.R. 76, 78.
Hadjioannou v. The Republic (1983) 3 C.L.R. 1041.
Michael Spanos v. The Republic (1985) 3 C.L.R. 1826.
 (2) 1985) 3 C.L.R. 300.
 (3) 1982) 3 C.L.R. 1027.

There is nothing whatever before me suggesting bias in the above sense on the part of the Director. That he wanted the continuation of the services of the applicant is an indication of the value he attached to his services. This fact was not hidden from the respondents, nor do I agree with the submission that the recommendation of the Director made the selection of the applicant impossible. On the contrary, the assessment of the applicant, as I read it, was marginally better than that of Sofronios Sofroniou. This ground, too, must be dismissed as untenable.

(C) *Interview*

The performance at an interview is a factor of variable importance. Greater importance may be attached to performance at interviews in cases of first appointment—*Christoudias v. The Republic* (1). Nothing before me indicates that respondents attached inordinate importance to the performance of the candidates at the interview as guide to their choice.

(D) *Ineligibility of Anna Loizidou*

The only ground upon which her eligibility is impugned is lack of publications evidencing her scientific accomplishments. In the first place a publication is not a prerequisite for appointment. If scientific accomplishment is otherwise provable, the scheme of service is satisfied. Such evidence was forthcoming in this case in view of the Director's assessment of her work at the Centre as "nearly excellent". The relevant part of the scheme of service provides "application in scientific research (επίδοση σε επιστημονική έρευνα) evidenced, if possible, by one or more publications." Publications are envisaged as evidence not as a prerequisite for appointment. When evidence is forthcoming about one's accomplishment in research from other sources, there is no obligation to look for further evidence. However, in this case, apart from the views of the Departmental Committee that she did satisfy the scheme of service and those of the Director about her work at the Centre, she is the author of doctoral thesis leading to the award of the title of

(1) (1983) 3 C.L.R. 622.

Ph. D. Objections to eligibility of Anna Loizidou cannot be upheld. It was open to the respondents to find that she did satisfy the scheme of service.

5 The recourse must be dismissed. However, reflecting on the impressive qualifications and publications of the applicant and the need of his services at the Centre, both indisputable facts, I believe it is advisable to institutionalize his tie with the Centre by offering him permanent appointment at the earliest opportunity.

10 In the result the recourses are dismissed with no order as to costs.

*Recourses dismissed.
No order as to costs.*