

1985 November 30

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

PANTELIS K. ANTONIADES,

*Applicant,*

v.

THE ELECTRICITY AUTHORITY OF CYPRUS.

*Respondents,*

(Case No. 283/84).

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*Administrative Law—Collective agreements—Do not create rights or obligations in the sphere of public law—Unless clothed with legality in the form of valid rules or regulations.*

*Administrative Law—Electricity Authority of Cyprus—Promotions—Scheme of Service—Court does not interfere with its interpretation if the interpretation given was reasonably open to the authority—Seniority—Even a long one does not tip the scales in favour of an applicant inferior in merit and qualifications to the interested party—“Experience”—Meaning of—Distinguishable from “service”.* 5 10

*The Electricity Authority of Cyprus—Promotions—The Public Corporations (Regulation of Personnel Matters) Law 61/70 s. 3—The Electricity Development Law, Cap. 171 as substituted by s. 2 of Law 16/60—Subsection 3 of section 3 of Law 61/70 read in conjunction with s. 44 of Cap. 171 as substituted by s. 2 of Law 16/60, empowering the E.A.C. to make rules or regulations, provides that such regulations have to be approved by the Council of Ministers and published in the Official Gazette—As the regulations setting up the Selection Committee were neither published nor approved as aforesaid, the sub judice promotion is tainted with illegality—Such regulations concerning the Selection Committee are not internal rules but a* 15 20

*public instrument within the meaning of the Interpretation Law, Cap. 1.*

5 The applicant challenges the decision of the respondents to promote in preference to him the interested party to the post of Administrative Officer, Secretariat/Legal Services.

10 The applications for the post in question were placed before the Joint Advisory Committee of Selection for Promotions, known as "Selection Committee" a body set up in furtherance of Article 24.1 (c) of a Collective Agreement between the Authority and the trade union of its employees.

15 It appears that the report of this Committee influenced in some respect the final decision. The Report of the Committee was considered by the sub-committee for Personnel Matters, which selected the interested party for promotion. Finally on the 27.3.84 the Board of the Authority took the sub judice decision.

20 The applicant complained that the interested party did not possess the required qualifications, that the respondents disregarded his seniority, that the act in question is discriminatory against him and that the Regulations governing promotions were not valid.

25 The relevant part of the scheme of service reads as follows:

- (a) University degree or diploma in Law....; and,
- (b) At least two years' practice as an advocate or three years' administrative experience with the Electricity Authority of Cyprus or other Authority or big Organization.
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35 It should be noted that while the applicant was performing routine duties in connection with personnel matters of the Limassol-Paphos Region, the interested party was as from July 1979 transferred to the Secretariat/Legal Services of the Authority. Notwithstanding this fact, applicant contended that the period of the interested party's

administrative experience should run as from his promotion to the post of Deputy Section Head on 2.2.82.

Applicant further submitted, inter alia, that the period of the administrative experience should be reckoned after the date of the obtaining by the interested party of his degree in law (25.2.81). The Board of the Authority was of the opinion that the two requirements of the scheme of service were independent of each other. 5

It should also be noted that the report of the Selection Committee influenced in some respect the sub judice promotion. 10

*Held, annulling the sub judice decision:*

(1) The material date at which a candidate must possess the required qualifications is the last day of the period prescribed in the advertisement for the vacancy applications to be submitted. As the interpretation given by the Authority to the scheme of service was reasonably open to it, both as a matter of construction of the scheme and as a matter of its application to the situation of the candidates there is no room for interference notwithstanding a different opinion on the part of the Court on either of the two subjects. 15 20

“Experience” contains the notion of knowledge acquired through acting in certain capacity. It should be distinguished from “service”. Applicant’s contention that the experience of the interested party should be reckoned as from 2.2.82 is unmerited 25

(2) Seniority, even a long one, cannot tip the scales, if a candidate is inferior in merit and qualifications. In this case the interested party was a more suitable candidate for the post. 30

(3) The complaint as to discrimination based on the different duties assigned to the applicant and the interested party in the past has no merit.

(4) Articles 122-125 of the Constitution stripped the Authority of the power of appointment, confirmation, em- 35

placement on the permanent or pensionable establishment', promotion, transfer, retirement etc. of its officers. However, section 3(1) of the Public Corporations (Regulation of Personnel Matters) Law 61/70 conferred on certain corporations including the Authority powers identical to those of the Public Service Commission under Article 125.1 of the Constitution.

The Selection Committee was set up by regulations made in furtherance of a collective agreement between the Authority and the Trade Union of its employees. A collective agreement does not create rights and obligations in the sphere of public law unless its provisions are clothed with legality in the form of valid rules or regulations. Sub-section 3 of s. 3 of Law 61/70 read in conjunction with s.44 of Cap. 171, as substituted by s.2 of Law 16/60 provides that any regulations made by the Authority should be approved by the Council of Ministers and be published in the Official Gazette. As the regulations setting up the Selection Committee were neither so approved or published, they are totally void and, therefore, the sub judge decision is tainted with illegality.

The said regulations are not internal rules, as argued by counsel for the respondents, but they are a public instrument, as defined in the Interpretation Law, Cap. 1 and they fall within the ambit of s. 3(2) of Law 61/70.

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

Cases referred to:

*Republic v. Katerina Pericleous and Others* (1984) 3 C.L.R. 577;

*Mytides and Another v. The Republic* (1983) 3 C.L.R. 1096;

*Frangoullides v. Public Service Commission* (1985) 3 C.L.R. 1680;

*The Republic v. Psaras* (1985) 3 C.L.R. 1939;

*Papapetrou v. The Republic*, 2 R.S.C.C. 61;

- Skapoullis and Another v. The Republic* (1984) 3 C.L.R. 554;
- Partellides v. The Republic* (1969) 3 C.L.R. 480;
- Smyrnios v. The Republic* (1983) 3 C.L.R. 124;
- Markoullides v. The Republic*, 3 R.S.C.C. 30; 5
- Stamatiou v. The Electricity Authority of Cyprus*, 3 R.S.C.C. 44;
- Kontemeniotis v. C.B.C.* (1982) 3 C.L.R. 1027;
- Mavrommatis and Others v. Land Consolidation Authority* (1984) 3 C.L.R. 1006; 10
- Arsalides v. CY.T.A.* (1983) 3 C.L.R. 510;
- Kofteros v. Cyprus Electricity Authority* (1985) 3 C.L.R. 394;
- Lefkatis v. The Republic* (1985) 3 C.L.R. 1372;
- R. v. Sheer Metal Craft Ltd. and Another* [1954] 1 All E. R. 542. 15

**Recourse.**

Recourse against the decision of the respondents to promote the interested party to the post of Administrative Officer, Secretariat/Legal Services, in preference and instead of the applicant. 20

Applicant appeared in person.

*S. Pouyouros* for *P. Cacoylannis* for the respondent.

*Cur. adv. vult.*

STYLIANIDES J. read the following judgment. The applicant challenges the decision of the respondents whereby the interested party was promoted to the post of Administrative Officer, Secretariat/Legal Services, in preference to him. 25

The post was advertised internally by the respondents on 10.1.84 and applications were invited from employees of 30

the respondents. Such applications should have reached the Director of Personnel the latest by 21.1.84. There were three candidates for the post, i.e. the applicant, the interested party and a certain Pourides.

5 The applications were placed before the Joint Advisory Committee of Selection for Promotions, known as "Selection Committee", a body set up under regulations made by the respondent Authority in furtherance of Article 24.1 (c) of a Collective Agreement between the Authority and  
10 the trade union of the employees. I shall revert to this body later on in this judgment.

The Selection Committee considered the applications, evaluated the candidates on a number of criteria, made the necessary comparison and recommended as suitable  
15 for promotion the applicant and the interested party.

The report of this Committee was considered by the Sub-Committee for Personnel Matters of the Authority who selected the interested party for promotion.

20 Finally, on 27.3.84, the Board of the Authority, having taken into consideration, inter alia, the common suggestion of the Selection Committee and the suggestions of the Sub-Committee of the Authority for Personnel Matters, reached the sub judice decision whereby the interested party, Yiangos Eftymiades, was promoted to the post in question.

25 The grounds on which this decision is challenged, as expounded in the written addresses of the applicant, are:-

- (a) That the applicant was the only candidate possessing the required qualifications and that the interested party lacked same;
- 30 (b) That the respondents disregarded the seniority of the applicant;
- (c) That the decision in question was an act of discrimination against him; and, finally,
- 35 (d) The validity of the Regulations governing the promotion in question was made an issue.

**QUALIFICATIONS:**

The required qualifications under the scheme of service are, inter alia:-

- (a) University degree or diploma in Law...; and,
- (b) At least two years' practice as an advocate or three years' administrative experience with the Electricity Authority of Cyprus or other Authority or big Organization. 5

Both the applicant and the interested party are holders of a degree in Law of the University of Salonica, the applicant having obtained his degree on 28.11.77 and the interested party on 25.2.81. They both obtained their said degrees during their service with the Authority. 10

Neither of the two practised at the Bar though the interested party passed the examinations of the Legal Board for enrolment as an advocate on 18.2.83. 15

The applicant was performing routine duties in connection with personnel matters of the Limassol-Paphos region whereas the interested party as from July, 1979, was transferred to the Secretariat/Legal Services of the Authority. He was working directly under the Secretary-Director of the Legal Services—and he was performing duties of serious nature in administrative and legal matters and he was by far superior in that respect to the applicant. 20

It was contended by the applicant that as the interested party was promoted to the post of Deputy Section Head of the Authority on 2.2.82, he did not possess the qualification of three years' administrative experience with the Authority. At any rate the period of the administrative experience should be reckoned after the date of the obtaining of the degree in Law. 25 30

The interested party obtained his degree on 25.2.81. In *Republic v. Katerina Pericleous and Others*, (1984) 3 C.L.R. 577, it was decided that the material date at which a candidate must possess the required qualifications is the last date of the period prescribed in the advertisement for the vacancy by which applications have to be submitted. 35

As it appears from the sub judge decision, the respondents interpreted the qualifications of the University degree and administrative experience required by the scheme of service as two distinct qualifications not correlated. The interpretation and application of schemes of service are within the discretion and power of the Authority. So long as their decision is one that was reasonably open to them both as a matter of construction of the scheme of service and as respects the application to the situation of the candidates, there is no room for interference notwithstanding a different opinion on the part of the Court on either of the two subjects—(*Mytides and Another v. The Republic*, (1983) 3 C.L.R. 1096; *Frangoullides v. Public Service Commission*, R. As. 286-287\* *The Republic v. Stelios Psaras*, R. A. 442).\*\*

Though there may be a different opinion with regard to the time of the reckoning of the three years' experience, nevertheless the interpretation given by the Authority was reasonably open to them on the basis of the structure and wording of the scheme.

"Experience" contains the notion of knowledge acquired through acting in a certain capacity and it should be distinguished from "service"—(*Theodoros G. Papapetrou v. The Republic*, 2 R.S.C.C. 61; *Skapoullis and Another v. The Republic*, (1984) 3 C.L.R. 554). The contention, therefore, that the date of experience of the interested party should be reckoned as from 2.2.82, when his service as Deputy Section Head commenced, is untenable, in view of the fact that the interested party was performing duties as from 1979 whereby he acquired the required administrative experience. It may be said that if someone lacked the required qualification of the three years' administrative experience, that might be the applicant. A candidate who lacks the required qualifications does not have a legitimate interest to challenge the decision in which he was not preferred for promotion. As, however, the respondents did not raise this objection, I will abstain from considering and expressing any definite opinion on the matter.

\* Reported in (1985) 3 C.L.R. 1680.

\*\* Reported in (1985) 3 C.L.R. 1939.



**SENIORITY:**

Seniority is one of the factors that are taken into consideration for promotion. If all other factors are more or less equal, seniority prevails. If a candidate is inferior in merit and qualifications, the scales cannot be tipped in his favour by seniority, even a long one—(*Partellides v. The Republic*, (1969) 3 C.L.R. 480; *Smyrniotis v. The Republic*, (1983) 3 C.L.R. 124).

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The seniority of the applicant was duly taken into consideration as a factor in his favour, as it emerges from the sub judice decision.

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The interested party, as it emerges from the material before the Authority and their evaluation, was better in other respects and a more suitable candidate to perform the duties of the post. The complaint about seniority is, in the circumstances, unfounded.

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**DISCRIMINATION:**

The applicant bases his complaint for discrimination on the fact that he was posted in the past in the area of Limassol and Paphos whereas the interested party at the Secretariat/Legal Services, and thus the applicant was deprived of the opportunity to contest on equal terms with the interested party due to the duties that were allocated to them, respectively, in their service with the Authority.

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This contention has no bearing in this case. The allegation for discrimination has no merit.

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**VALIDITY OF REGULATIONS:**

This, however, is not the end of the matter. The Authority as from Independence Day—16th August 1960—by constitutional provision (Articles 122-125) was stripped of the power of appointment, confirmation, emplacement on the permanent or pensionable establishment, promotion, transfer, retirement, etc., over its officers and servants—(*Andreas A. Markoullides v. The Republic*, 3 R.S.C.C. 30; *Stamatiou v. The Electricity Authority of Cyprus*, 3 R.S.C.C. 44). The power was vested in the Public Service Commission established under the Constitution. After the enact-

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ment of the Public Service Law, 1967 (Law No. 33/67) whereby the now existing Public Service Commission was set up with power limited for civil servants, a vacuum was created. The Public Corporations (Regulation of Personnel  
5 Matters) Law, 1970 (Law No. 61/70) was enacted.

Section 3(1) thereof conferred on certain corporations, including the respondent Authority, powers identical to those entrusted to the Public Service Commission by Article 125.1 of the Constitution. Subsections (2) and (3) of s. 3  
10 read as follows:-

“3. - (1).....

(2) Τηρουμένων των διατάξεων του εδαφίου (3), οιαδήποτε των εν τω εδαφίω (1) αναφερομένων αρμοδιοτήτων ασκείται υπ’ εκάστου Οργανισμού συμφώνως προς τας διατάξεις του οικείου νόμου ή οιαδήποτε  
15 δυνάμει αυτού εκδοθέντων ή εκδοθησομένων κανονισμών ή κανόνων, τας ρυθμιζούσας το θέμα εν σχέσει προς το οποίον ασκείται η αρμοδιότης.

(3) Οσάκις ο οικείος νόμος δεν περιλαμβάνη διάταξιν ρυθμιζούσαν ή χορηγούσαν εις τον Οργανισμόν εξουσίαν προς έκδοσιν κανονισμών ή κανόνων ρυθμιζόντων οιαδήποτε των θεμάτων εν σχέσει προς τα  
20 οποία δύνανται να ασκηθῆ υπό του Οργανισμού αρμοδιότης δυνάμει του εδαφίου (1), ο οικείος νόμος θα ερμηνεύηται και εφαρμόζηται ως εάν περιλαμβάνετο εν αυτώ διάταξις χορηγούσα εις τον Οργανισμόν εξουσίαν προς έκδοσιν κανονισμών ή κανόνων ρυθμιζόντων  
25 το θέμα τούτο».

(“3. - (1) .....

(2) Notwithstanding the provisions of sub-section 3, any of the competences referred to in sub-section 1 is exercised by each organisation in accordance with the provisions of the relevant law or under any rules or regulations issued or to be issued by virtue of this  
30 law, regulating the matter in respect of which the competence is exercised.

(3) When the relative law does not include a provi-

sion regulating or granting to the Organisation the power to issue rules or regulations regulating any of the matters in respect of which competence may be exercised by the Organisation by virtue of sub-section (1), the relative law will be construed and applied as if it included in it provisions granting the organisation power to issue rules and regulations regulating this matter”).

The respondents in arriving at the sub judge decision took into consideration, inter alia, the recommendation of the Selection Committee. It is not easy to say what weight was attached to this recommendation either by the Authority or by the sub-Committee of Personnel of the Authority. Definitely it influenced to some degree their selection.

This Selection Committee was set up by Regulations (Κανονισμοί) made by the Authority in furtherance of Article 24.1 (c) of a Labour Collective Agreement which was not produced. These Regulations are exhibit “X”. They bear date 1.10.75. The competence of this Selection Committee extends to all cases concerning the filling of a vacancy by promotion from the existing staff of the Authority subject to the provisions of the Agreement. It is composed of three members appointed by the Authority and three members proposed by the trade union and appointed by the Director-General of the Authority. These Regulations provide for the procedure to be followed and the criteria to be applied by this Selection Committee in cases of promotion, the preparation of its suggestion and/or a common document, etc.

A collective labour agreement does not create rights of public law. By itself an agreement creates neither rights nor does it impose obligations in the field of public law. Only when it is clothed with legality in the form of valid rules or regulations, it creates rights and obligations in the sphere of public law—(*Kontemeniotis v. C.B.C.*, (1982) 3 C.L.R. 1027; *Georghios Mavrommatis and Others v. Land Consolidation Authority*, (1984) 3 C.L.R. 1006, at p. 1022).

The Regulations for the Selection Committee were not validated by approval of the Council of Ministers and publication in the Official Gazette; hence for the purposes of

public law they are invalid and non-existent—(*Arsalides v. C.Y.T.A.*, (1983) 3 C.L.R. 510; *Kofteros v. Cyprus Electricity Authority*, (1985) 3 C.L.R. 394; *Lefkatis v. The Republic*, (1985) 3 C.L.R. 1372).

- 5 It was argued by counsel for the respondents that the Selection Committee Regulations are not regulations but internal rules of the Authority.

The competence of the Authority entrusted to it by s. 3(1) of Law 61/70 has to be exercised according to the provisions of the Electricity Development Law or in accordance with rules or regulations issued or to be issued thereunder. If there is a provision in the law, there is no necessity for rules or regulations to be made. Subsection (3) of s. 3 of Law 61/70 read in conjunction with s. 44 of the Electricity Development Law, Cap. 171, as substituted by s. 2 of the Electricity Development (Amendment No. 2) Law, 1960 (Law No. 16/60), empowering the Authority to make rules or regulations, provides that such regulations have to be approved by the Council of Ministers and be published in the Official Gazette of the Republic. There is no statutory provision governing the exercise of such power.

Irrespective of whether the contents of the document, exhibit "X", dated 1.10.85, intituled "Κανονισμοί Μικτής Συμβουλευτικής Επιτροπής Επιλογής γενόμενοι δυνάμει του Άρθρου 24(1)(γ) της Συλλογικής Συμβάσεως 1974-1975" (Regulations of the Joint Advisory Committee of Selection made by virtue of Article 24(1)(c) of the Collective Agreement 1974-1975) are "rules" or "regulations", definitely they are not internal rules, as argued by counsel for the respondents, but they are public instrument, as defined in the Interpretation Law, Cap. 1, and they fall within the ambit of the provisions of s. 3(2) of Law No. 61/70. They govern in some respect the manner in which the power of the Authority under Subsection (1) of s. 3 of Law No. 61/70 is exercised.

In order to make this instrument valid, it is necessary that all the stages provided for by the enabling enactment should be gone through, namely, the making, the approval by the Council of Ministers and the issue and publication thereof. When these have been done, they are valid but if

there is in any way no conformity with these statutory requirements or any of them, they are totally void as made in excess of power and contrary to law—(*R. v. Sheer Metal Craft Ltd. and Another*, [1954] 1 All E.R. 542; *Lefkatis v. The Republic* (supra)).

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The sub judice decision for the promotion of the interested party is tainted with illegality of the Regulations governing the Selection Committee and, therefore, it is null and void and of no legal effect.

In view of the aforesaid the sub judice promotion is hereby declared null and void and of no legal effect. Let there be no order as to costs. 10

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