

1985 December 6

[LORIS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

NIKI NICOLAOU AND OTHERS,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE ATTORNEY-GENERAL,
2. THE PUBLIC SERVICE COMMISSION,

*Respondents.*

*(Cases Nos. 507/83 and 66/84).*

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*Public Officers—Promotions—Schemes of Service—The Court will not place an interpretation different from that given to it by the P.S.C., if such interpretation was reasonably open to the P.S.C. on the basis of its wording.*

- 5 *Administrative Law—Legitimate interest—Person who is not qualified under the scheme of service for a post, does not possess a legitimate interest to challenge the appointment of somebody else to such post.*

10 The applicants in the above recourse, who hold the post of Statistics Assistant 3rd Grade (Statistics and Research Department—Ministry of Finance) challenge the decision of the Public Service Commission not to promote them to the combined post of Statistics Assistant 2nd Grade taken on the ground that the applicants did not  
15 possess the qualifications required by the scheme of service, the relevant part of which provides as follows:

20 “1 (d) Success in the examination for the certificate of Registered Statistical Assistant, that is Part 1 or Preliminary of the Institute of Statisticians of the U. K. or other higher or equivalent qualification, and...”.

The applicants, though furnished with a certificate of exemption from the Preliminary Examination of the Institute of Statisticians of U. K., had not passed the examination for the "Certificate of Registered Statistical Assistant, that is Part 1 or Preliminary of the Institute of Statisticians of U.K.". After obtaining clarifications from the Institute of Statisticians of U. K. the P.S.C. reached the sub judice decision. 5

*Held*, dismissing the recourse.

1. This Court will not give to a scheme of service an interpretation different from that given to it by the Public Service Commission, provided that such interpretation was reasonably open to it, as indeed it was in the present case. 10

2. A person not possessing the qualifications required by the scheme of service for a post does not have a legitimate interest to challenge the appointment of somebody else in that post. 15

*Recourse dismissed.*

*No order as to costs.*

Cases referred to: 20

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

*Republic v. Xinari and Others*, (1985) 3 C.L.R. 1922;

*Panayides v. The Republic*, (1973) 3 C.L.R. 378;

*Sofocleous (No. 2) v. The Republic*, (1972) 3 C.L.R. 637;

*Arsalis v. The Republic*, (1976) 3 C.L.R. 255; 25

*Paraskevopoullou v. The Republic*, (1980) 3 C.L.R. 647;

*Leontiou v. The Republic*, (1983) 3 C.L.R. 221.

#### **Recourses.**

Recourses against the decision of the respondents whereby applicants, holders of the post of Statistics Assistant, 3rd Grade, in the Department of Statistics and Research, were not promoted to the combined post of Statistics Assistant on the ground that they did not possess the qua- 30

fications required by the relevant scheme of service.

*P. Angelides*, for applicants.

*A. Pappasavvas*, Senior Counsel of the Republic, for the respondents.

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*Cur. adv. vult.*

LORIS J. read the following judgment. By means of the above intitled recourses the applicants—all public officers holding the post of Statisticts Assistant 3rd Grade (Statistics and Research Department—Ministry of Finance)—  
 10 impugn the decision of the respondent Public Service Commission dated 5.11.1983, whereby the applicants were not promoted to the combined post of Statistics Assistant, 2nd Grade, on the ground that they did not possess the qualifications required by the relevant scheme of service.

15 Both recourses, as above, were heard together on the application of all concerned as involving common factual and legal issues.

The decision of the P.S.C. dated 5.11.83 (vide Appendix 13 attached to the opposition in recourse under No. 66/84)  
 20 was communicated to the applicants by means of a letter dated 13.12.83 addressed to their counsel which is appended to recourse No. 66/84.

The material facts relating to both recourses are very briefly as follows:

25 The P.S.C. at its meeting of 26.7.83 (vide Appendix 8 attached to the opposition in recourse 66/84) in considering the recommended promotion of 27 candidates—amongst whom were all the applicants—holding the post of Statistics Assistant 3rd Grade to the combined post of Statistics  
 30 Assistant, 2nd Grade, noted that all applicants in the above intitled recourses, though furnished with a certificate of exemption from the Preliminary Examination of the Institute of Statisticians of U. K. had not passed the examinations qualifying for the “Certificate of Registered Statistical  
 35 Assistant, that is Part 1 or Preliminary of the Institute of Statisticians of U.K.” as envisaged by paragraph 1(δ) of the scheme of service applicable, (vide Appendix 16 attached

to the opposition in recourse 66/84) the relevant part of which reads as follows:-

«1. (δ) Επιτυχία στην εξέταση για το πιστοποιητικό Εγγεγραμμένου Βοηθού Στατιστικής (Registered Statistical Assistant), ήτοι Μέρος I ή Preliminary του Ινστιτούτου Στατιστικολόγων του Ηνωμένου Βασιλείου ή άλλο ανώτερο ή ισότιμο προσόν, και...»

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*English Translation:*

“1. (d) Success in the examination for the certificate of Registered Statistical Assistant, that is Part I or Preliminary of the Institute of Statisticians of the U.K. or other higher or equivalent qualification, and....”

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Upon this, the P.S.C. decided at its aforesaid meeting to apply for clarifications on the matter, to the Institute of Statisticians of the U.K.; a letter to that effect dated 26.8.1983 was addressed by the P.S.C. to the said Institute (vide Enclosure No. 9 attached to the opposition in case No. 66/84).

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The Institute of Statisticians replied to the P.S.C. on 19.9.83 as follows: (Vide enclosure No. 10 attached to the opposition recourse No. 66/84).

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“The Institute of Statisticians

19th September, 1983.

.....

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Chairman Public Service Commission,  
The Office of the Public Service Commission,  
Nicosia, Cyprus.

Dear Sir,

Thank you for your letter of 26th August referring to previous correspondence regarding exemption policy.

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The Education Committee has studied all the details and I am able to confirm that the Institute will

award exemption from the Preliminary Examination to candidates who have passed, with Grade C or above, the Statistics course at the Cyprus College. The candidates must then take the Institute's compulsory Preliminary paper of Collection and Compilation of Data. Candidates who have claimed this exemption are not permitted to apply for Registered Statistical assistant status—they have merely covered the Institute of Statisticians syllabus requirement for the 2 papers from which they have been exempted (Calculation and Presentation of Results) and the syllabuses are taken to be similar, not equivalent. This exemption is awarded in line with the overall exemption policy of the Institute.

Therefore, we must ask that you seek written confirmation that the students concerned have passed the Examination in Statistics from Cyprus College and only those with Grade C, or above, may claim exemption.

I look forward to receiving your reply.

Yours sincerely,

Elizabeth A. Taylor, (Miss)

Education Secretary."

Upon receipt of the aforesaid letter of the Institute of Statisticians U.K., the P.S.C. addressed a letter on 3.10.83 (vide Appendix 11 attached to the opposition in case No. 66/84) to the Cyprus College, Nicosia inquiring as to the grade attained by the applicants in passing the statistical examinations of the aforesaid college.

In reply, the Cyprus College informed the P.S.C. by letter dated 10.10.83 (vide Appendix 12 attached to the opposition in case No. 66/84) that all the applicants in the above recourses had passed the examinations of the Cyprus College with Grade C or above (4 applicants with

Grade "A", 10 applicants with Grade "B" and 4 applicants with Grade "C").

The P.S.C. at its meeting of 5.11.83 considered the relevant scheme of service having before it the clarifications of the Institute of Statisticians of U.K. contained in their letter set out above, and the relevant letter of the Cyprus College dated 10.10.83, and reached the decision that all the applicants could not be promoted to the combined post of Statistics Assistant 2nd Grade as they did not possess the qualifications required by paragraph 1(d) of the relevant scheme of service (vide the decision of the P.S.C. in Appendix 13 attached to the opposition in case No. 66/84).

The applicants, feeling aggrieved, instituted the present proceedings.

It has been laid down as early as 1961 by the then Supreme Constitutional Court in the case of *Papapetrou v. The Republic*, 2 R.S.C.C. 61 at p. 69 "that in deciding whether or not the Public Service Commission in a given case has conformed with the relevant scheme of service the Court will not give to such scheme a different interpretation other than that given to it by the Public Service Commission provided that such interpretation was reasonably open to it on the basis of the wording of the scheme in question..."

This principle has been constantly reiterated ever since and it was even repeated recently (27.8.85) by the Full Bench of this Court in *R. A. 402 Republic v. Eleni Xinari and Others* (still unreported)\*

In the present cases considering the totality of the circumstances surrounding them and in particular the clarifications contained in the letter of the Institute of Statisticians of U. K. addressed to the P.S.C. on 19.9.83, I hold the view that the interpretation given by the respondent Commission to the Scheme of Service under consideration was reasonably open to it.

Concluding I feel duty-bound to add, since a preliminary objection to that effect was raised by the respondent Commission that if candidates do not possess the qualifications

\* Reported in (1985) 3 C.L.R. 1922.

required by the scheme of service for the post in question they do not have a legitimate interest to challenge the appointment of somebody else in that particular post (vide *Panayides v. The Republic* (1973) 3 C.L.R. 378; *Sophocleous (No. 2) v. The Republic* (1972) 3 C.L.R. 637; *Arsalis v. The Republic*, (1976) 3 C.L.R. 255; *Paraskevopoulou v. The Republic*, (1980) 3 C.L.R. 647; *Leontiou v. Republic*, (1983) 3 C.L.R. 221).

10 In the result, both recourses fail and they are accordingly dismissed; in the circumstances I have decided to make no order as to their costs.

*Recourses dismissed with  
no order as to costs.*