

1985 December 30

[SAVVIDE^r, J]IN THE MATTER OF ARTICLE 176
OF THE CONSTITUTION

MARIA NICOLAIDOU,

Applicant

v.

THE PUBLIC SERVICE COMMISSION

Respondent.

(Case No 384/83)

Public Officers—First Entry Post—Appointment to—Recommendations of Head of Department—The principle that special reasons should be given for not acting upon them is not applicable in cases of appointments to First Entry Posts, where the candidates do not hold any post in the Government Service—The holding of a post on a temporary basis is not an advantage for its holder in respect to appointment to a first entry post—Interviews—Performance at, another mode of forming an opinion, though not the decisive one—Striking superiority—Meaning of—Interested party's performance at the interview better than the applicant's—Both applicant and interested party hold an L.C.C. Higher in accounting but applicant has an additional qualification, namely a University Degree—In the circumstances such additional qualification does not amount to a striking superiority.

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Constitutional Law—Equality

This recourse is directed against the appointment of 17 persons on probation to the permanent post of Tax Collection Officer, 3rd Grade (a first entry post) instead of the applicant

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The applicant and the interested parties were among the candidates for appointment to the said post who had

5 been called to an interview before the respondent Commission. The interviews were held in the presence of the Director of the Department of the Inland Revenue who expressed his opinion in respect of the performance of the candidates at the interviews.

10 On the 6.4.1983 the respondent Commission evaluated the performance of the 37 candidates interviewed by it. The applicant was assessed as "nearly very good", one of the interested parties as "excessively good" and the remaining sixteen interested parties as "very good".

It should be noted that since 1979 the applicant had been serving on contract as a Clerk 2nd Grade at the Tax Collection Office of Limassol.

15 Counsel for the applicant submitted that the respondent Commission failed to take into consideration the recommendations of the Head of the Department without giving reasons for doing so, that the Commission overvalued the object of the interviews, that it failed to take into consideration that the applicant was already serving in the Tax Collection Office and that it disregarded the applicant's superior qualifications in comparison with the interested parties and in particular with interested party Christina Kythreoti.

Held, dismissing the recourse:

25 (1) The principle that, when the recommendations of the Head of the Department are not acted upon, the respondent has to give a special reasoning, is applicable in cases of promotion, as it is in such cases that the recommendations of the Head of the Department are material and proper weight should be given to them. But such principle is not applicable in the case of a first entry post, where the applicants are not holding any post in the Government Service.

30 (2) Respondent's failure to give weight to the fact that the applicant was already serving on contract in the Tax Collection Office does not constitute an irregularity. In the case of first entry posts the holding of a post on a temporary basis does not create an advantage in favour

of its holder. Such an advantage would have amounted to a limitation of the prospects of candidates who are outside the service and to some extent would have violated the principle of equality.

(3) An interview is another mode of forming an opinion, though not the decisive one. In the circumstances and bearing in mind that the post to be filled was a first entry post, the Commission acted within the proper limits of its discretionary power. 5

(4) Both the applicant and the interested parties satisfied the requirement of the relevant scheme of service. The applicant is the holder of a University Degree and of the L.C.C. Higher in Accounting, whilst interested party Kythreotou holds only the L.C.C. Higher in Accounting. Interested party Kythreotou had a better performance at the interview. In the circumstances applicant's additional qualification does not amount to a "striking" superiority over the interested party Kythreotou. 10 15

Recourse dismissed.

No order as to costs. 20

Cases referred to:

HadjiConstantinou v. The Republic (1973) 3 C.L.R. 65;

Petrides v. The Republic (1975) 3 C.L.R. 284;

Constantinides v. The Republic (1984) 3 C.L.R. 498;

Elias v. The Republic (1985) 3 C.L.R. 38; 25

Republic v. Haris (1985) 3 C.L.R. 106;

Maratheftis v. The Republic (1982) 3 C.L.R. 1088;

Papantoniou v. The Republic (1968) 3 C.L.R. 233;

Triantafyllides v. The Republic (1970) 3 C.L.R. 235;

Makrides v. The Republic (1983) 3 C.L.R. 622; 30

Smyrniotou v. The Republic (1983) 3 C.L.R. 124;

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

Recourse.

Recourse against the decision of the respondent to appoint the interested parties on probation to the permanent post of Tax Collection Officer, 3rd Grade, in preference and instead of the applicant.

L. Papaphilippou, for the applicant.

G. Erotocritou (Mrs.), Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The present recourse is directed against the decision of the respondent to appoint 17 other candidates (the interested parties in this recourse) on probation to the permanent post of Tax Collection Officer, 3rd Grade, instead of the applicant who was also a candidate.

Applicant is serving, since 1979, as a Clerk 2nd Grade on contract, at the Tax Collection Office of Limassol. After the approval of the Minister of Finance for the filling of a number of vacancies in the post of Tax Collection Officer, 3rd Grade, in the Department of Inland Revenue was granted, the vacancies were advertised in the official Gazette of the Republic, bearing in mind the fact that the said posts were first entry posts. As a result, 194 applications were submitted which were remitted by the Secretary of the respondent Commission to the departmental committee set up for the purpose of considering the applications and making the necessary recommendations.

The departmental committee met on the 24th September, 1982 and recommended sixty of the candidates as suitable for appointment and included their names in a list submitted to the respondent Commission. The names of the candidates were inserted in such list in alphabetical order and both the applicant and the interested parties were amongst them.

The respondent Commission at its meeting of the 7th December, 1982, found that the diplomas or degrees of 15 of the candidates who are recommended by the depart-

mental committee were not in the appropriate subject in accordance with the scheme of service for the post. The respondent Commission further decided to interview the qualified candidates and such interviews took place on the 28th, 29th and 31st March, 1983. Present at such interviews was the Director of the department of Inland Revenue who expressed his comments as to the performance of the candidates at the interviews which are recorded in the minutes of the respondent Commission. At its meeting of the 28th March, 1983, the respondent ascertained that in fact only seventeen posts had to be filled, in view of the fact that two of the posts had not been included in the Annual Estimates and the third post had not yet become vacant.

The respondent Commission finally met on the 6th April, 1983 and evaluated the performance of the candidates at the interviews, bearing in mind also the comments of the Director of the department of Inland Revenue. The evaluation of the Commission appears in the minutes and the 37 candidates interviewed by it were evaluated as "very good", "nearly very good", "excessively good". The applicant was assessed by the respondent as "nearly very good".

The respondent then bearing in mind the assessment of the candidates at the interviews and the material contained in their applications as well as the documents attached thereto came to the conclusion that the 17 interested parties were on the average superior over the other candidates and selected them as the most suitable for appointment in the permanent post of Tax Collection Officer, 3rd Grade. The record of the minutes which is Annex 15 to the Opposition, reads as follows in this respect:

"The Commission examined material factors appearing in the applications and the testimonials of the candidates and the personal file and confidential reports of one candidate who is a public officer and has taken into consideration the conclusions of the Departmental Committee and the performance of the candidates at the interviews before the Public Service Commission in the light of the relevant comments and views of the Director of the Inland Revenue Department.

5 The Commission in the light of all the material before it came to the conclusion that the candidate who was considered by the Public Service Commission during the interview as 'excessively good' and 16 other candidates who are considered as 'very good' are generally superior to all other candidates and are the most suitable for the appointment in the post of Tax Collection Officer, 3rd Grade."

10 The names of persons selected by the Commission for appointment is given in the said minutes and they are the 17 interested persons whose appointment is challenged by this recourse.

The grounds of law on which the recourse is based as set out in the application are:

15 1. The respondent acted in excess and/or abuse of power in that the applicant is superior in merit over the interested parties.

20 2. The respondent failed to take into consideration the fact that the applicant was already serving in the Tax Collection Office and was performing duties related to tax collection and, therefore, she had the necessary experience which the interested parties did not possess.

3. The applicant was treated in a discriminatory manner viz-a-viz the interested parties.

25 4. The sub judice decision lacks all due reasoning.

In his written address counsel for applicant expounded on the legal grounds raised by the recourse. In dealing with the first ground he contended that:

30 1. The respondent failed to take into consideration the recommendations of the head of the department and/or his evaluation at the interview without giving any reasons for doing so.

2. Overevaluated the object of the interview of the candidates.

35 3. The respondent did not take into consideration the superior academic qualifications of the applicant in com-

parison with the interested parties and in particular with interested party Christina Kythreoti.

The principles governing the weight to be attached to the recommendations of the Head of Department are well established and it is settled that when such recommendations are not acted upon the respondent has to give a special reasoning. (*HadjiConstantinou v. The Republic* (1973) 3 C.L.R. 65; *Petrides v. The Republic* (1975) 3 C.L.R. 284; *Constantinides v. The Republic* (1984) 3 C.L.R. 498).

As it emanates from our case law the head of department is in the special position to evaluate the abilities of the candidates for the particular post. (*Elias v. The Republic* (1985) 3 C.L.R. 38 at p. 42 and the Full Bench case of *The Republic v. Harris* (1985) 3 C.L.R. 106 at p. 111). In this respect we read the following in *The Republic v. Haris* (supra) at p. 112:

“‘Recommendations’ in the context of this section has to be given its popular meaning rather than taken as being used in any narrow legal or technical sense. It carries with it the duty on the Head of the Department to give a description of the merits of the candidates and by comparing their respective merits and demerits to suggest who is more qualified for the post. He has to make an assessment of the suitability of every candidate on a consideration of all factors relevant to his merits, qualifications and seniority, and then make a comparison of the candidates by reference thereto—(*Evangelou v. The Republic*, (supra); *Georghios Gavriel v. The Republic*, (1971) 3 C.L.R. 186, at p. 199; *Mytides & Another v. The Republic* (supra)).”

The above principles, however, are applicable in cases of promotion from one step of the ladder of evolution in the service to a higher and it is in such cases that the recommendations and comments of the head of department are material and proper weight should be given to them. But such principles cannot apply in the case of a first entry post where the applicants are not holding any post in the government service. The present case is one of first entry and the candidates with the exception of the one mentioned

in the minutes of the meeting of the committee who was a public officer (not the applicant) were persons for whom the Head of Department had no knowledge and could not make any recommendations. The employment on a temporary basis is not normally effected by the normal process through the Public Service Commission and, therefore, the appointment of a temporary officer by the Head of the Department cannot pre-determine the exercise of the discretion of the Public Service Commission in the discharge of its duty to select the best candidate for appointment.

The holding of a post on a temporary basis does not create an advantage in favour of its holder in the case of first entry posts. This would have amounted to a limitation of the prospects of candidates who are outside the service and to some extent it would have violated the principle of equality. (See *Maratheftis v. The Republic* (1982) 3 C.L.R. 1088 at pp. 1094 and 1095; *Papantoniou v. The Republic* (1968) 3 C.L.R. 233 at p. 238).

Therefore, the fact that the respondent, in making his selection of the most suitable candidates for appointment, failed to give weight to the fact that the applicant was already temporarily serving in the Tax Collection Office, in another post (Clerk 2nd Grade) cannot be treated as an irregularity, in the exercise of its discretion, of such a nature as to vitiate the sub judice decision. The holding of a temporary post is not an advantage tending to establish superiority of the holder over the rest of the candidates. The respondent in this case, as it emanates from its minutes, in selecting the candidates who were considered by it as the best, took into consideration all the facts appearing in the applications of the candidates and all other facts before it and in particular the performance of the candidates at the interviews.

As to the complaint of the applicant about the interviews and her complaint that the respondent gave undue weight to such interviews before forming its final opinion about the candidates it is again well settled under our case law that an interview is another mode of forming an opinion though not the decisive one. (*Triantafyllides v. The Republic* (1970) 3 C.L.R. 235; *Makrides v. The Republic*

(1983) 3 C.L.R. 622; *Smyrnios v. The Republic* (1983) 3 C.L.R. 124, at page 135).

Bearing in mind the fact that the post to be filled was a first entry post the respondent acted properly and within the limits of its discretionary powers in the way that it carried out the interview for the purpose of evaluating the suitability of the applicants.

It has been further contended that the applicant has superior academic qualifications than the interested parties and in particular Christina Kythreotou. The applicant, as it emanates from the material before me, is the holder of a university degree and furthermore the L.C.C. Higher in Accounting. Interested party Kythreotou has no university degree but she holds a similar qualification to that of the applicant, in L.C.C. Higher in Accounting. In this respect the applicant as well as all interested parties satisfied the scheme of service concerning the necessary qualifications.

The question which poses for consideration is whether the holding of the additional university degree creates a striking superiority in favour of the applicant over interested party Kythreotou.

Superiority of a candidate over another in order to be a ground for interference by this Court should, according to our case law, be a striking one, in the sense that same is so obvious that it is a reason for this Court to interfere. (*Hjiloannou v. The Republic* (1983) 3 C.L.R. 1041 at p. 1046).

Comparing the qualifications of the applicant to those of interested party Kythreotou it emanates that though both of them possess the necessary qualifications required by the scheme of service the applicant has an additional qualification over the interested party that of the university degree. The interested party however in the opinion of the respondent had a better performance at the interview. In the circumstances of the case and in the light of all material before me, I cannot treat the fact that the applicant had an additional qualification, as, by itself, amounting to striking superiority and that the respondent by having not taken it into consideration exceeded the limits of its discre-

tionary powers (see the case of *Hjiloannou v. Republic* (supra) at pp. 1046-1047).

5 In the light of the above, the contentions of the applicant that the respondent acted in excess and/or abuse of powers cannot be entertained.

Before concluding, I wish briefly to answer the question of undue reasoning which was raised by the applicant.

10 In the minutes of the meeting of the committee the matters which the respondent took into consideration in forming an opinion and taking its decision, are given and in my view, they amount to sufficient reasoning, making it possible for this Court to exercise its judicial control.

In the result, this recourse fails and is hereby dismissed but in the circumstances I make no order as to costs .

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Recourse dismissed.

No order as to costs.