

1985 February 21

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

MICHAEL ELIA,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondents.*

(Case No. 172/83)

*Public Officers—Promotions—Qualifications—Possession of academic qualifications additional to those required by the scheme of service—And which are not specified in the scheme of service as an advantage—Effect.*

*Public Officers—Promotions—Head of Department—And Departmental Boards—Their functions are completely different.* 5

*Public Officers—Promotions—Selection of candidates for promotion by the Public Service Commission—Principles applicable—And principles governing judicial control of such selection—Applicant failed to establish that he had striking superiority over the interested parties.* 10

The applicant, a Senior Agricultural Superintendent, was a candidate for promotion to the post of Chief Agricultural Superintendent. The Public Service Commission promoted the interested parties to the above post; and hence this recourse. 15

Counsel for the applicant contended:

- (a) That the recommendations of the Head of Department were not duly reasoned and were contrary to the report and/or recommendations of the Department. 20

mental Board which was chaired by the same person—the Head of the Department.

- (b) That the applicant was superior in qualifications to the interested parties.

5       *Held*, that the function of the Departmental Board is completely different from the function of the Head of Department when making his recommendations in the context of his statutory duty under section 10       44(3) of the Public Service Law, 1967, because the duty of the Board is to select not less than two and not more than four for each vacancy and the function of the Head of Department at the meeting of the Commission is to recommend which of the candidates already submitted to the Commission by the 15       Departmental Board should be appointed or promoted; that, moreover, the recommendations of the Head Department were consonant to and supported by the confidential reports and the other material in the file; and that though no extensive 20       reasoning was given by the Head of Department, he gave sufficient reasoning which is supported by the material in the file of the Administration and his recommendations were not inconsistent with the recommendations of the Departmental Board; accordingly contention (a) must fail. 25

(2) That the applicant failed to satisfy the Court that he has striking superiority over the other interested party even in qualifications; that possession of academic qualifications additional to those required by the 30       scheme of service which are not specified in the scheme of service as an advantage, should not weigh greatly in the mind of the Commission who should decide in selecting the best candidate on the totality of the circumstances before them.

35       (3) (*After stating the principles governing selection of candidates by the Public Service Commission and the principles governing judicial control of such selection—vide pp. 44-45 post*, that on the totality of the material before this Court the applicant failed 40       to establish that there existed striking superiority

over the interested parties or any of them as to lead to the conclusion that the sub judice decision was taken in excess or abuse of power; that the Commission took into consideration all relevant matters and did not take into account any matter which it ought not to; that the decision taken was reasonably open to the Commission; and that, accordingly, the recourse must be dismissed. 5

*Comments to the effect that no useful purpose is served by the recording of the religion of any member of the public service in his official papers or in the documents which are placed before the Commission by the Administration for appointment or promotion purposes.* 10

*Application dismissed.*

Cases referred to: 15

*Menelaou v. Republic* (1969) 3 C.L.R. 36;

*Theodossiou v. Republic*, 2 R.S.C.C. 44;

*Evangelou v. Republic* (1965) 3 C.L.R. 292;

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

*Thalassinos v. Republic* (1973) 3 C.L.R. 386; 20

*Soteriadou and Others v. Republic* (1983) 3 C.L.R. 921  
at p. 930;

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

*Georghiou v. Republic* (1976) 3 C.L.R. 74 at p. 83.

**Recourse.** 25

Recourse against the decision of the respondent to promote the interested parties to the post of Chief Agricultural Superintendent in preference and instead of the applicant.

*N. Stylianidou* (Miss) for E. Efstathiou, for the applicant. 30

*N. Charalambous*, Senior Counsel of the Republic,  
for the respondent.

*Cur. adv. vult.*

STYLIANIDES J. read the following judgment. The applicant, a Senior Agricultural Superintendent, seeks the annulment of the decision of the respondent Public Service Commission dated 11.12.82 and published in the Official Gazette of the Republic No. 1838 of 11.2.83 whereby the two interested parties were promoted to the post of Chief Agricultural Superintendent in preference to the applicant.

The Director-General of the Ministry of Agriculture and Natural Resources by letter dated 8.2.82 requested the filling of one vacant post of Chief Agricultural Superintendent. A Departmental Board was established pursuant to s.36 of the Public Service Law, No. 33/67, and the Regulations made thereunder. As in the meantime another post became vacant, by letter dated 30.4.82 a further request was made for the filling of this second vacant post.

Thereafter the Departmental Board met on 16.6.82 under the chairmanship of the Director of Agriculture, Head of the Department, and recommended as suitable for promotion all five candidates in alphabetical order and transmitted their recommendations to the Commission on 21.6.82.

On 15.11.82 the respondent Commission heard the recommendations of the Head of the Department and issued the sub judice decision whereby the two interested parties were promoted.

Counsel for the applicant challenged the validity of the sub judice decision on the ground that the seniority of the interested parties was fictitious; that the recommendations of the Director were not duly reasoned and were contrary to the report and/or recommendations of the Departmental Board which was chaired by the same person—the Head of the Department; and that the applicant was superior in qualifications to the interested parties.

Article 125.1 of the Constitution and thereafter Law No. 33/67 entrusted the Public Service Commission with the sole competency to decide on all matters concerning, inter alia, the promotion of public officers. The object of the constitutional provision and of Law No. 33/67 is to safeguard the efficiency and proper functioning of the public

service of the Republic for the interest of the public whom they are designed to serve and also to protect the legitimate interests of the individual holders of public offices.

The respondent Commission has the duty to select the most suitable candidate. In doing so they should base their decision on merit, qualifications and seniority. Merit should carry the most weight because the functions of a public office are better performed by a public officer better in merit than seniority or qualifications—(*Menelaou v. The Republic*, (1969) 3 C.L.R. 36). The confidential reports and the recommendations of the Head of the Department are vital considerations—(*Theodossiou v. The Republic*, 2 R.S.C.C 44; *Evangelou v. The Republic*, (1965) 3 C.L.R. 292; Section 44 of the Public Service Law, No. 33/67).

A Head of the Department is in a position to appreciate the demands of the post to be filled and the suitability of the candidate to discharge the duties of the post. The Public Service Commission has to pay heed to such recommendations and if they decide to disregard them, they have to give reasons for so doing—(*The Republic of Cyprus through the Public Service Commission v. Georghios Haris*, Revisional Appeal No. 334, still unreported, \* and the cases cited therein).

The function of the Departmental Board is completely different from the function of the Head of the Department when making his recommendations in the context of his statutory duty under s.44(3) of the Public Service Law. The Departmental Board is established under s.36 of the Law in respect of appointments or promotions. The duty of that Board is to select not less than two and not more than four for each vacancy, if there are suitable persons for such recommendation. The function of the Head of the Department at the meeting of the Commission is to recommend which of the candidates already submitted to the Commission by the Departmental Board should be appointed or promoted. The Departmental Board takes a preparatory decision and advises the Commission when there are many candidates. If and when the candidates for each vacancy are less than four, again the evaluation and

\* Reported in (1985) 3 C.L.R. 106.

the report of the Departmental Board are different in some way in nature to the recommendation envisaged by s.44 by the Head of the Department—(*Gregoris Thalassinos v. The Republic*, (1973) 3 C.L.R. 386; *Soteriadou and Others v. The Republic*, (1983) 3 C.L.R. 921, at p.930).

The Departmental Board simply recommended all five candidates as suitable for promotion. The recommendations of the Head of the Department run as follows:—

10 «Συστήνονται για προαγωγή οι Γιαννάκης Νικολάου και Κώστας Κωνσταντίνου, οι οποίοι είναι εξαιρετοι υπάλληλοι και υπερέρχουν έναντι των άλλων υποψηφίων.

15 Ο Νικολάου υπηρετεί στον Κλάδο Χρήσεως Ύδατος στο Επαρχιακό Γεωργικό Γραφείο Λάρνακας και ο Κωνσταντίνου είναι ο υπεύθυνος στην Έπαυλη Α-θαλάσσης.

20 Ο Αγαμέμνων Σαββίδης υπηρετεί στον τομέα Μηχανολογικού Τμήματος Χρήσεως Γης στο Τμήμα Γεωργίας, ο Μιχαήλ Ηλία εργάζεται στο Επαρχιακό Γεωργικό Γραφείο Πάφου και έχει ειδικότητα στην αμπελουργία και ο Χρίστος Ιωαννίδης υπηρετεί στο Επαρχιακό Γεωργικό Γραφείο Λεμεσού.

25 Όλοι οι υποψήφιοι έχουν δίπλωμα ή πιστοποιητικό αναγνωρισμένου Κολλεγίου στη Γεωπονία ή σε θέμα σχετικό με τις δραστηριότητες του Τμήματος Γεωργίας, που θεωρείται από το Σχέδιο Υψηρεσίας ως επιπρόσθετο προσόν».

30 (“Yiannakis Nicolaou and Costas Constantinou, who are excellent officers and are superior to all other candidates, are recommended for promotion.

Nicolaou is serving in Water Use Section of the District Agricultural Office, Larnaca and Constantinou is in charge of Athalassa Farm.

35 Agamemnon Savvides is serving in the Farm Machinery Land Use Section of the Department of Agriculture, Elias Michael is working at Paphos District Agricultural Office and specialises in viticulture and

Christos Ioannides is serving at the Limassol District Agricultural Office.

All the candidates have a diploma or certificate of a recognised College in Agriculture or in a subject relative to the activities of the Department of Agriculture, which is considered by the scheme of service as an additional qualification"). 5

The recommendations of the Director are consonant to and supported by the confidential reports and the other material in the file. It is significant that the two promotees were rated "Excellent" whereas the applicant was rated "Very Good". Interested party Nicolaou was rated with 10.2.0. and 8.4.0; Constantinou with 11.1.0 and 12.0.0; and the applicant with 0.10.1. 10

Though no extensive reasoning was given by the Director, he gave sufficient reasoning which is supported by the material in the files of the Administration. The recommendations of the Director are not inconsistent with the recommendations of the Departmental Board; I have already made the distinction between the object and separate functions of the Departmental Board on the one hand and the recommendations of the Head of the Department on the other. The recommendations of the Director is certainly an intermediate act in the process of the promotion and it is subject to judicial scrutiny. 15  
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#### *QUALIFICATIONS:*

Both the applicant and the interested parties have the required qualifications under the scheme of service and the additional qualification.

Counsel for the applicant in his written address admitted that the qualifications of Nicolaou are equal to those of the applicant. He cited the list of qualifications in his written address but since the allegation of superiority of the applicant to this interested party was not pursued, it is not necessary to say that interested party Nicolaou compares more favourably to the applicant in qualifications. 30  
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The applicant failed to satisfy the Court that he has

striking superiority over the other interested party even in qualifications. Possession of academic qualifications additional to those required by the scheme of service, which are not specified in the scheme of service as an advantage, should not weigh greatly in the mind of the Commission who should decide in selecting the best candidate on the totality of the circumstances before them—(*Hji-Ioannou v. The Republic*, (1983) 3 C.L.R. 1041).

It is a settled principle of administrative Law that when an organ, such as the Public Service Commission, selects a candidate on the basis of comparison with others, it is not necessary to show, in order to justify his selection, that he was strikingly superior to the others. On the other hand, an administrative Court cannot intervene in order to set aside the decision regarding such selection unless it is satisfied, by an applicant in a recourse before it, that he was an eligible candidate who was strikingly superior to the one who was selected, because only in such a case the organ which has made the selection for the purpose of appointment or promotion is deemed to have exceeded the outer limits of its discretion and, therefore, to have acted in excess or abuse of its powers; also in such a situation the complained of decision of the organ concerned is to be regarded as either lacking due reasoning or as based on unlawful or erroneous or otherwise invalid reasoning—(*Odysseas Georgiou v. The Republic*, (1976) 3 C.L.R. 74, at p.83).

On the totality of the material before this Court the applicant failed to establish that there existed striking superiority over the interested parties or any of them as to lead to the conclusion that the sub judice decision was taken in excess or abuse of power. The Commission took into consideration all relevant matters and did not take into account any matter which it ought not to. The decision taken was reasonably open to the Commission. Therefore, I find no merit in this recourse.

In the appendix "List of Officers" in which the service and qualifications of the litigants are tabularized, under the name of the applicant, in brackets, it is recorded "Maronite". I presume that this relates to the religion or ethnic

group of the applicant. I wonder what is the object that this record serves. The required qualifications of a member of the public service is that he is a citizen of the Republic and no more. The freedom of conscience and religion are enshrined and safeguarded by Article 18 of our Constitution. Religion or conviction refer to theistic, non-theistic and atheistic convictions and freedom of religion and conscience includes freedom of belief, freedom of practice, freedom of manifestation, teaching and observance, and includes also freedom not to disclose one's religion or philosophical convictions. 5 10

No discrimination on the basis of religion or philosophical conviction is permissible. The Maronites have elected under the relevant constitutional provisions and the Law and they are part of the "Greek community", as this term is defined in the Constitution. I see no useful purpose of the religion of any member of the public service being recorded in his official papers or in the documents which are placed before the Commission by the Administration for appointment or promotion purposes. Certainly, no discrimination because of religion was exhibited in this case nor complained of by the applicant. I took this opportunity to make this comment not only lest in the future any complaint is raised but also so that all papers of the civil servants be in accord with the constitutional provisions relating to the liberties and rights of the citizens of the Republic. 15 20 25

In the result this recourse is hereby dismissed but in all the circumstances no order as to costs is made.

*Recourse dismissed with no order as to costs.* 30