

1985 January 31

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

ZACHARIAS O. ZACHARIADES,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, AND/OR  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

*(Case No. 134/84).*

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5 *Public Officers—Promotions—Criteria relevant to promotion in  
order of importance are merit, qualifications and seniority—The latter prevails if all other factors are equal—  
Interview of candidates—Performance of candidates at—  
Not an independent factor for determining the suitability  
of candidates—And equal importance as to the factor of  
10 qualifications, which is a statutory criterion for the de-  
termination of suitability cannot be attached to such per-  
formance—Superiority of applicant in terms of qualifica-  
tions disregarded—And, thus, respondents acted under a  
material misconception of the facts relevant to the suit-  
ability of the parties—Sub judice decision annulled on  
15 this ground and because of the failure of the respondents  
to attach due weight to the recommendations of the Head  
of Department.*

20 The applicant and the interested party were candidates for promotion to the post of Hospital Steward, Medical and Public Health Services, a first entry and promotion post. Both candidates were equal in terms of merit, whilst the interested party was senior to the applicant. The latter, however, had superior qualifications. He was specially trained in hospital administration; he was the holder of the higher diploma in hospital administration awarded

by the South Bank Polytechnic of London after successful completion of nearly two years' studies. Also he was the holder of a degree in Law of the University of Salonica and a diploma of the Royal Society for Public Health Inspectors, as well as a certificate of the Institute of Health Service Administrators of the United Kingdom. Further, notwithstanding the absence of direct comparison between the two candidates there was an unmistakable element of preference for the applicant in the recommendation of the Head of Department.

The respondent, Public Service Commission, selected the interested party for appointment because of his better performance at the interview and his seniority. Hence this recourse.

*Held*, that the performance at an interview is not an independent criterion for the assessment of a candidate's suitability for appointment but only one other factor that may shed light on a candidate's personality and capabilities albeit by no means conclusive; that the criteria relevant to promotion in order of importance are merit, qualifications and seniority; that seniority becomes a decisive factor only when the other factors balance equally; that where, as in this case, the candidates are equally rated in terms of merit, qualifications acquire added prominence as a determining factor in the selection process; that the P.S.C. misdirected themselves as to the importance of performance at an interview and generally its consequence in the selection process and they treated it as an independent factor for determining the suitability of candidates and more so they seemingly attached to it equal importance as to the factor of qualifications, a statutory criterion for the determination of suitability; that they disregarded the superiority of the applicant in terms of qualifications that should normally prove decisive for what appears to be flimsy reasons; and that this led them to a misconception of the facts relevant to the suitability of the parties for promotion which was material and had a direct bearing on the decision taken; accordingly the sub judice decision must be annulled.

*Held, further*, that the sub judice decision is liable to

be annulled for one more reason, failure on the part of the P.S.C. to attach due weight to the recommendations of the Head of Department and evaluate them in the spirit they were made (pp. 450-451 post).

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*Sub judice decision annulled.*

Cases referred to:

*Triantafyllides and Others v. Republic* (1970) 3 C.L.R. 235, at p. 245;

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

10 *Makrides v. Republic* (1983) 3 C.L.R. 622, 633;

*Marathevtou & Others v. Republic* (1982) 3 C.L.R. 1088;

*Papadopoulos v. The Republic* (1982) 3 C.L.R. 1070;

*Tantas v. The Republic* (1983) 3 C.L.R. 1430;

*Vourkos v. The Republic* (1983) 3 C.L.R. 1442;

15 *Nissis v. The Republic* (1967) 3 C.L.R. 473;

*Michael v. The Republic* (1971) 3 C.L.R. 405;

*Phylactou v. The Republic* (1973) 3 C.L.R. 445;

*Smyrnios v. The Republic* (1983) 3 C.L.R. 1202.

**Recourse.**

20 Recourse against the decision of the respondent to promote the interested party to the post of Hospital Steward in the Medical and Health Services in preference and instead of the applicant.

*A. S. Angelides*, for the applicant.

25 *A. Vassiliades*, for the respondent.

PIKIS J. read the following judgment. The applicant, a highly qualified officer in Hospital administration and the interested party, an officer with long service in the clerical department of Hospital administration, were among the four candidates recommended by a Departmental Committee for promotion to the post of Hospital Steward,<sup>(1)</sup> Medical and Public Health Services, a first entry and promotion post. After noticeable delay in the process of screening the 48 applications for the filling of the post, a recommendation to the above effect was submitted to the Public Service Commission on 15th December, 1983.

Following the report of the Departmental Committee the respondents invited the recommended candidates to an oral interview in the presence of Mr. Markides, the Director of Medical Services. Before departing Mr. Markides made an appraisal of the performance of the candidates at the interview and then proceeded to make a carefully worded recommendation for the applicant and interested party. Notwithstanding the absence of direct comparison between the two candidates there was, to my mind, an unmistakable element of preference for the applicant in the recommendation of Mr. Markides. He opened his recommendation by referring to the applicant first, taking care to indicate succinctly the reasons for his recommendations. His education and experience at work, coupled with his training and background, specially equipped him for the successful discharge of the duties carried by the vacant post. It is interesting to contrast the reasons for the recommendation of the applicant with those given for the recommendation of the interested party. It is couched in these terms: "Mr. Mavrakis has sufficient experience on the subject derived from his work at the Hospital for quite some time." No doubt he was referring to his experience on the clerical side of Hospital administration and such incidental knowledge as he was bound to acquire about other fields of activity in the Hospital.

In assessing the worth of the candidates with a view to

<sup>(1)</sup> Φροντιστής

determining their suitability for appointment, the respondents noted in the first place that applicant and interested party had equally complimentary confidential reports, a correct evaluation of the records before them. They selected the interested party for appointment for two reasons: (a) Better performance at the interview—Here they did not share the assessment of the performance of the parties at the interview made by Mr. Markides; they formed the impression the interested party performed slightly better than the applicant. (b) Seniority.

The interested party joined the clerical branch of the civil service in 1954, the rungs of which he climbed over the years promoted to Senior Clerical Officer as from 15th May, 1982. Applicant joined another branch of the civil service, that of, public health. He joined the service as Health Inspector, 3rd grade, in 1972 and was promoted to Health Inspector grade 'A' on 15th March, 1982<sup>(1)</sup>. The seniority of the interested party over the applicant, noticed by the respondents, has not been doubted.

The gist of the case for the applicant, and here lies his principal complaint, is that the P.S.C. failed to give the importance due to his qualifications as a determinant for his claims to promotion and reflect upon their implications for the successful discharge of the duties of the post to be filled. Although they took stock of the fact that applicant had superior qualifications in comparison to the interested party and that such qualifications were referable to hospital administration, nevertheless they concluded they were neutralized as a factor for preference for the applicant by the performance of the interested party at the interview, marginally better, in their view,

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<sup>(1)</sup> For the completeness of the record it may be mentioned that applicant was promoted to Senior Health Inspector 2nd grade, as from 15th June, 1983, a promotion that cannot be noticed for it occurred subsequent to the material date for the determination of the qualification of the candidates for promotion. (See Republic v. Pericleous (1984) 3 C.L.R. 577).

than that of applicant. They attached, it seems to me, importance to the interview out of all proportion to its significance as a pointer to a candidate's suitability for appointment and generally his capabilities. The importance of an interview as an element for ponderation in the selection process was examined by Triantafyllides, J., as he then was, in *Andreas Triantafyllides and Others v. The Republic* (1970) 3 C.L.R. 235, 245. 5

The learned Judge put, if I may say so with respect, its value in a correct perspective stressing that performance at an interview is not an independent criterion for the assessment of a candidate's suitability for appointment but only one other factor that may shed light on a candidate's personality and capabilities albeit by no means conclusive. In my opinion he depicted rightly its significance by saying "... that in any event performance at an interview is a factor of limited importance because of the necessarily rather short duration of each interview and of the undeniable possibilities of an adroit candidate making the Commission think more highly of him than he deserves or of a timid or nervous candidate not being able to show his real merits". 10 15 20

As observed in *Makrides v. The Republic* (1983) 3 C.L.R. 622, 633, the weight that may be attached to an interview, necessarily varies with the importance of the personality of the holder for successful discharge of the duties of the post under consideration<sup>(1)</sup>. The law enumerates the criteria relevant to promotion and specifies the order of their importance<sup>(2)</sup>; they are: merit, qualifi- 25

(1) *Marathevtou & Others v. The Republic* (1982) 3 C.L.R. 1088.

(2) s. 44(2)—Law 33/67. *Papadopoulos v. The Republic* (1982) 3 C.L.R. 1070; *Tantas v. The Republic* (1983) 3 C.L.R. 1430; *Vourkos v. The Republic* (1983) 3 C.L.R. 1442.

cations and seniority. At the one end of the scale, the top, there is merit and at the lower end seniority. We have it on authority that seniority becomes a decisive factor only when the other factors balance equally (3). Where,

5 as in this case, the candidates are equally rated in terms of merit as reflected in their confidential reports, qualifications acquire added prominence as a determining factor in the selection process. We are referring to qualifications in the sense of s.44(2) and not in the sense of eligibility

10 under a scheme of service, that is, the minimum qualifications necessary for appointment. Their significance cannot be overstated if of a kind equipping a candidate with knowledge designed to enable him to carry out successfully the duties carried by the post to be filled. In

15 this case the applicant was specially trained in hospital administration; he was the holder of the higher diploma in hospital administration awarded by the South Bank Polytechnic of London after successful completion of nearly two years his studies. The course was followed on a

20 scholarship awarded by the World Health Organization. Also he was the holder of a degree in Law of the University of Salonica and a diploma of the Royal Society for Public Health Inspectors, as well as a certificate of the Institute of Health Service Administrators of United

25 Kingdom. Indicating his reasons for recommending the applicant, Mr. Markides took pains to stress that he had the proper education and background for the discharge of the duties of the post under consideration. The applicant had better qualifications than the interested party, an

30 appreciation that could be decisive for the choice to be made in view of the equality of the parties in terms of merit; more so in view of the nature of the qualifications

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(3) Nissis v. The Republic (1967) 3 C.L.R. 473; Michael v. The Republic (1971) 3 C.L.R. 405; Phylactou v. The Republic (1973) 3 C.L.R. 445; Smyrnios v. The Republic (1983) 3 C.L.R. 1202.

of the applicant and their relevance to the discharge of the duties of the post. His superiority in this regard was found to be outweighed by the marginally better performance of the interested party at the interview. It very much seems to me the P.S.C. misdirected themselves as to the importance of performance at an interview and generally its consequence in the selection process. It appears to me they treated it as an independent factor for determining the suitability of candidates and more so they seemingly attached to it equal importance as to the factor of qualifications, a statutory criterion for the determination of suitability. They disregarded the superiority of the applicant in terms of qualifications that should normally prove decisive for what appears to me to be flimsy reasons. This led them to a misconception of the facts relevant to the suitability of the parties for promotion. The misconception was material and had a direct bearing on the decision taken. Therefore, the decision must be annulled.

In my judgment the decision is liable to be annulled for one more reason, failure on the part of the P.S.C. to attach the weight due to the recommendations of the Head of the Department and evaluate them in the spirit they were made; all the more so in view of the prominence he attached to the education and background of the applicant for the discharge of the duties of the post to be filled. As indicated at the outset, there was an element of preference



in the recommendations of the Head of the Department for the applicant that was not properly heeded by the respondents.

- 5 In the result the decision is annulled. Let there be no order as to costs.

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