

1985 March 28

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

IOANNIS KARIS,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondents.

(Case No. 309/83).

Public Officers—Promotions—Qualifications—Constituting an advantage under the schemes of service—Duty of Commission to inquire and decide whether a candidate possesses such qualifications—And to give cogent reasons for not preferring a candidate possessing them—No such inquiry carried out by the Commission and no cogent reasons given for ignoring applicant's additional qualifications—Commission's discretion exercised in a defective manner and thus its decision is wrong in Law and in excess and abuse of powers—Moreover slightly better picture of applicant in merit a further ground for cogent and convincing reasons to be given for not preferring him—Recommendations of Head of Department not constituting due reasoning in this particular case.

The applicant was a candidate for promotion to the post of Senior Industrial Officer. The Public Service Commission decided to promote the interested party to the said post; and hence this recourse. Under the relevant scheme of service "a post graduate diploma or degree in a suitable subject shall constitute an advantage". From the confidential reports it emerged that the applicant was slightly better than the interested party.

Counsel for the applicant submitted that the interested

party did not possess the additional qualification provided by the scheme of service and contended that the respondent Commission failed to carry out a due inquiry as to whether the interested party and the applicant possessed the additional post graduate qualification as required by the scheme of service and that no special reasoning was given by the Commission for disregarding the additional qualifications possessed by the applicant.

Held, that the Commission has a statutory obligation to inquire and decide for itself whether a candidate possesses the additional qualification provided in the schemes of service; that this is a sine qua non to any further steps in the process of the exercise of its discretion; that such an inquiry has to be apparent in the minutes of the Commission; that if a candidate possessing the additional qualification provided in the scheme of service is not preferred, then cogent reasons should be given for ignoring same; that a general reference to the qualifications is not sufficient; that neither a general reference by the Head of Department to the academic qualifications satisfies the requirements of the rules of administrative Law; that the Commission in the present case has not conducted the sufficiently necessary inquiry into the most material aspect of the matter, i.e. the possession of the additional qualification by the applicant and the interested party; and that, therefore, the Commission exercised its discretion in a defective manner, and thus its decision regarding the promotion of the interested party is wrong in Law and in excess and abuse of power.

Held, further, that the slightly better picture of the applicant depicted in the confidential reports was a further ground for cogent and convincing reasons to be given for not preferring the applicant and the recommendations of the Director-General in this particular case do not constitute due reasoning.

Sub judice decision annulled.

Cases referred to:

Pattichis and Another v. Republic (1968) 3 C.L.R. 374;

Georghiou v. Republic (1976) 3 C.L.R. 74;

- Georghiades and Another v. Republic* (1970) 3 C.L.R. 257;
Soteriadou v. Republic (1983) 3 C.L.R. 921;
Kousoulides v. Republic (1967) 3 C.L.R. 438;
Partellides v. Republic (1969) 3 C.L.R. 480;
Smyrnios v. Republic (1983) 3 C.L.R. 124; 5
Tourpekki v. Republic (1973) 3 C.L.R. 592 at p. 603;
Nissiotis v. Republic (1977) 3 C.L.R. 388;
Petrides v. Republic (1981) 3 C.L.R. 57;
Republic v. Petrides (1984) 3 C.L.R. 378;
Kampouris v. Educational Service Committee (1983) 10
 3 C.L.R. 1165;
Michael and Another v. Public Service Commission (1982)
 3 C.L.R. 726;
Mytides and Another v. Republic (1983) 3 C.L.R. 1096.

Recourse.

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Recourse against the decision of the respondent to promote the interested party to the post of Senior Industrial Officer in preference and instead of the applicant.

G. Triantafyllides, for the applicant.

A. Papasavva, Senior Counsel of the Republic, for 20
 the respondents.

A. S. Angelides, for the interested party.

Cur. adv. vult.

STYLIANIDES J. read the following judgment. The applicant by the present recourse seeks a declaration of the Court that the decision of the respondent Commission to promote the interested party, Stelios Vassiliou (hereinafter called "the interested party"), to the post of Senior Industrial Officer in preference to and instead of the applicant is null and void and of no effect whatsoever. 25
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The Director-General of the Ministry of Commerce and Industry by letter dated 3.7.82 requested the respondent Commission to fill a vacant post of Senior Industrial Officer — a promotion post. A Departmental Board was set up under the provisions of s. 36 of the Public Service Law, 1967 (Law No. 33/67). After consideration of the list of candidates for promotion and the qualifications required under the scheme of service, they recommended three candidates, i.e. the applicant, the interested party and another public officer.

The respondent Commission at its meeting of 24.2.83 considered the matter. The Director-General of the Ministry made orally his recommendations. The relevant minute reads as follows:-

“The Director-General of the Ministry mentioned the following:-

Ioannis Karis is an excellent officer and his performance in 1982 was also excellent. He has a very long experience in matters concerning standardization, especially in the field of foods.

Stelios Vassiliou has a very wide experience in matters of standardization, especially in the field of control of industrial products. He has shown a very great zeal and his performance in 1982 has improved and is excellent. His specialization in Mechanical Engineering makes him very suitable for this post.

The selection between Karis and Vassiliou is very difficult. Having regard to the merit, academic and professional qualifications and their experience, Vassiliou is slightly superior to Karis and he is recommended for promotion. Karis is superior in academic qualifications whereas Vassiliou possesses professional qualifications superior to those of Karis.

Vassiliou is a member of three recognized Institutes and is the holder of a Certificate in Industrial Administration whereas Karis is a member of two recognized Institutes”.

After these recommendations of the Director-General the

Commission took its decision which reads as follows:-

“The Commission examined the material elements from the Personal Files and the Confidential Reports of the candidates and took into consideration the conclusions of the Departmental Board and the opinion and recommendations of the Director-General of the Ministry of Commerce and Industry.

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The Commission, taking into consideration all the material before it, decided that Stelios Vassiliou is superior to the other candidates on the totality of the established criteria (merit, qualifications, seniority) and decided to promote him as the most suitable to the post of Senior Industrial Officer with effect 1.3.83”.

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An administrative Court cannot intervene in order to set aside the decision regarding a selection of a candidate for promotion 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 an 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. The first duty of the Court in reviewing promotions is to see whether the promoting authority exercised its discretionary power in conformity with the statutory provisions and the rules and requirements of administrative Law generally, including good faith. So long as the authority acted within those limits, the Court cannot interfere; it cannot substitute its own opinion as to the merit of the candidates for that of the promoting authority—(*Pattichis and Another v. The Republic*, (1968) 3 C.L.R. 374; *Georghiou v. The Republic*, (1976) 3 C.L.R. 74; *Georghiades and Another v. The Republic*, (1970) 3 C.L.R. 257; *Soteriadou v. The Republic*, (1983) 3 C.L.R. 921).

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It is common ground that the interested party is senior to the applicant by 11 months in the immediately lower post of Industrial Extension Officer, Class 1. It is well

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settled, however, that seniority is the last of the established criteria and should prevail if all other things are more or less equal—(*Kousoulides v. The Republic*, (1967) 3 C.L.R. 438; *Partellides v. The Republic*, (1969) 3 C.L.R. 480; 5 *Nicos Smyrnios v. The Republic*, (1983) 3 C.L.R. 124).

The applicant complains, inter alia, that the respondent Commission failed to carry out a due inquiry as to whether the interested party and the applicant possessed the additional post graduate qualification as required by the scheme of service and that no special reasoning was given by 10 the Commission for disregarding the additional qualifications possessed by the applicant.

In the scheme of service, paragraph 5, "Required Qualifications", we read: "A post graduate diploma or degree 15 in a suitable subject shall constitute an advantage".

The qualifications of the applicant, as set out in the list appended to the opposition, are:-

- (i) Degree of Bachelor of Science;
- 20 (ii) Degree of Master of Science in Food Technology and Nutrition;
- (iii) Degree of Doctor of Philosophy of the University of Reading.

The interested party possesses:-

- (i) Ordinary National Certificate in Engineering;
- 25 (ii) Higher National Diploma in Mechanical Engineering;
- (iii) Certificate in Industrial Administration "B" of the North East London Polytechnic;
- (iv) Certificate in Industrial Administration II of the 30 Polytechnic of South Bank; and,
- (v) Graduate of the Institution of Mechanical Engineers.

The Commission has to carry out an inquiry whether or not the applicant and the interested party possessed the qualifications which under the scheme of service would be 35

an advantage to a candidate. The general reference to the qualifications of the candidates does not sufficiently disclose whether such material fact, as the possession or not, of a qualification constituting an additional advantage was duly inquired into. Such an inquiry has to be apparent in the minutes of the Commission. If a candidate possessing the additional qualification provided in the scheme of service is not preferred, then cogent reasons should be given for ignoring same. 5

In *Tourpeki v. The Republic*, (1973) 3 C.L.R. 592, 10
A. Loizou, J., said at p. 603:-

“I find that the Commission has not conducted the sufficiently necessary inquiry into such a most material factor and, therefore, it exercised its discretion in a defective manner; so the sub judice decision of the respondents having been arrived at contrary to the accepted principles of administrative Law and in abuse or excess of powers, is null and void and of no effect whatsoever. 15

Moreover, the outcome of such inquiry should have appeared in the reasoning of the sub judice decision and in case it was found by the Commission that the diploma possessed by the applicant was constituting an advantage, then convincing reasons should have been given for ignoring it. ... I, therefore, annul the decision for lack of due reasoning which makes the sub judice decision contrary to Law and in excess and abuse of power”. 20 25

(See, also, *Nissiotis v. The Republic*, (1977) 3 C.L.R. 388; *Petrides v. The Republic*, (1981) 3 C.L.R. 57). 30

In *Petrides* case (supra) Hadjianastassiou, J., after citing the above passage from *Tourpeki* said:-

“But I would go further and state that in the present case, and in view of the fact that the Commission had before it the personal file of the applicant, I think, it was bound to give due reasoning why the applicant was not preferred. If further authority is needed on this point I think the case of *Kyriacos G. Bagdades v. The Central Bank of Cyprus*, (1973) 3 35

C.L.R. 417, makes it very clear that reasons are needed”.

5 The first instance judgment in *Petrides* case on the issue of the additional qualifications was reversed by the Full Bench—(*The Republic v. Petrides*, (1984) 3 C.L.R. 378)—as the trial Judge based his decision on the issue of the additional qualification on the assumption that the interested parties did not possess the additional qualification and, consequently, according to the established principles of administrative Law, since the applicant had better qualifications cogent and specific reasons should appear in its decision as to why the applicant was not selected for appointment, which was not the case as both the applicant and the interested parties possessed the additional qualification.

15 In the present case it was vigorously argued by counsel for the applicant that the interested party did not possess the additional qualification. Nothing appears in the minutes of the Commission that the Commission directed its mind whether the interested party had the additional qualification, and the submissions of counsel of the applicant and the interested party are wide apart as to whether the interested party had the additional qualification or not. It is not for this Court to decide whether the interested party possessed the additional qualification.

25 In *Kampouris v. The Educational Service Committee*, (1983) 3 C.L.R. 1165, the relevant scheme of service required “degree/diploma of a University... of the standard of B. Sc. (Engineering)”. It was held that it was entirely open to the respondent Commission to decide that the holder of a Higher National Diploma (HND) in Mechanical and Production Engineering of the Central London Polytechnic was not qualified thereunder.

35 The Commission has a statutory obligation to inquire and decide for itself whether a candidate possesses the additional qualification provided in the scheme of service. This is a sine quo non to any further steps in the process of the exercise of its discretion—(*Michael and Another v. Public Service Commission*, (1982) 3 C.L.R. 726; *Mytides and Another v. The Republic*, (1983) 3 C.L.R. 1096).

A general reference to the qualifications is not sufficient; neither a general reference by the Head of the Department to the academic qualifications satisfies the requirements of the rules of administrative Law.

The Commission in the present case has not conducted the sufficiently necessary inquiry into the most material aspect of the matter, i.e. the possession of the additional qualification by the applicant and the interested party. 5

From the files of the confidential reports it emerges that the applicant is slightly better than the interested party. In 1980 they were equally rated but in 1981 the applicant was rated with 10 "Excellent" and 2 "Very Good"—generally "Excellent"—whereas the interested party with 4 "Excellent" and 8 "Very Good"—in general "Very Good". Furthermore in the confidential report of the applicant for 1981 we read the following: «Διαθέτει εξαιρετικήν υπηρεσιακήν κατάρτησιν και επιδεικνύει ζήλον και αφοσίωσιν εις την εκτέλεσιν των καθηκόντων του», whereas nothing is to be found in the confidential report of the interested party, though they were assessed by the same reporting officer. 10 15 20

Besides the general principle, the above picture of the applicant and the interested party, as depicted in the confidential reports, was a further ground for cogent and convincing reasons to be given by the Commission for not preferring the applicant. The recommendations of the Director-General in this particular case, as set out above, do not constitute due reasoning. The Commission exercised its discretion in a defective manner, leading to its decision regarding the promotion of this interested party which is wrong in Law and in excess and abuse of power. 25 30

In view of the aforesaid the sub judice decision shall be annulled.

It was further argued by counsel for the applicant that the recommendations of the Director-General are not borne out from the material in the file. As the sub judice decision will be annulled on another ground, I need not deal with this issue. 35

In the result the sub judice decision is hereby declared null and void and of no effect but in all the circumstances of the case no order as to costs is made.

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