

1982 April 3

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION.

VIAS LIVADAS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 232/77).

*Public Officers—Secondment—Confidential reports—Preparation
—By whom—Even if there was an irregularity in the prepara-
tion of these confidential reports not of a material nature
vitiating the promotions of the interested parties—Section 45
of the Public Service Law, 1967 (Law 33/67) and section 5
3 of the State Officers (Temporary Regulating Provisions)
Law, 1975 (Law 54/75).*

*Public Officers—Promotions—Interview of candidates—Undue
and disproportionate importance should not be accorded
to impressions formed at the interview—Applicant and 10
one of the interested parties more or less equal as regards
qualifications and merit—Cogent reasons ought to have
been given by the Commission for disregarding the seniority
of the applicant, by a slight majority, merely on the 15
basis of impressions formed at the interviews of the candi-
dates—Promotion of this interested party annulled as
made in a defective manner resulting in excess of powers
on the part of the Commission—Applicant failed to satis-
fy Court that he was striking superior to the other of the 20
interested parties or, at least, equal to him in every other
respect so that the seniority of the applicant would be
treated as a factor that should have tipped the scales in
his favour.*

The applicant and the interested parties were candidates for promotion to the post of Senior Productivity Officer at the Productivity Centre. The Public Service Commission promoted the interested parties and hence this recourse.

5 Counsel for the applicant mainly contended:

- (a) That it was unlawful for Mr. Constantinou to make the confidential reports for the year 1976 in respect of the two interested parties because both of them were at the time seconded to "Merimna" and Mr. Constantinou was as from April 1976 the acting Director of the Productivity Centre.
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- (b) That the respondent Commission acted under a misconception because what are stated in its relevant minutes regarding the comparison of the candidates do not correspond to the contents of the relevant confidential reports.
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- (c) That since applicant was much senior to interested party Ioannou and that, as such interested party was not otherwise superior to the applicant, the impression formed when the said interested party and the applicant were interviewed should not have been treated as a decisive factor leading to the selection of this interested party instead of the applicant.
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Regarding contention (c) above the decision to promote interested party Ioannou was taken by a majority of three to two as the Chairman of the Commission and two of its Members were of the view "...that Mr. Theodoros Ioannou gave very satisfactory replies to questions put to him and generally he proved to be much better than Mr. Vias Livadas".

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Held, (1) that Mr. Constantinou was not excluded from making the confidential reports in relation to the two interested parties for 1976 (see section 45 of the Public Service Law, 1967 (Law 33/67) and, in relation, particularly, to seconded officers, section 3 of the State Officers (Temporary Regulating Provisions) Law, 1975 (Law 54/75)).

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Held, further, that even if it had been found that the

making of such reports by Mr. Constantinou was an irregularity it would have been held that it was not of a material nature vitiating the promotions of the interested parties.

(2) That having compared the relevant minutes, as a whole, of the respondent Commission with the contents of the confidential reports relating to the candidates it does not appear to this Court that the Commission has laboured under any material misconception in evaluating the candidates.

(3) That there should not be accorded undue and disproportionate importance to impressions formed at the interviews of the candidates; that as in every material respect the applicant and interested party Ioannou were more or less equal as regards qualifications and merit and the applicant was much senior to the said interested party the respondent Commission ought to have given cogent reasons for disregarding the seniority of the applicant, by a slight majority, merely on the basis of impressions formed at the interviews of the candidates, especially as the seniority and longer service of the applicant in the post of Productivity Officer were expressly referred to by the Head of the Department concerned in making his recommendations to the Commission; and that, therefore, the promotion of interested party Ioannou should be annulled as having been made in a defective manner resulting in excess of the powers on the part of the respondent Commission.

(4) That regarding the promotion of interested party Constantinides the applicant, on whom the burden lay, failed to satisfy this Court that he was strikingly superior to such interested party, or, at least, equal to him in every other respect so that the seniority of the applicant could be treated as a factor that should have tipped the scales in his favour; and that it was, therefore, reasonably open to the Commission to decide to promote the said interested party instead of the applicant and, so, this recourse against his promotion has to be dismissed.

Promotion of interested party Ioannou annulled. Promotion of interested party Constantinides upheld.

Cases referred to:

Christou v. Republic (1980) 3 C.L.R. 437 at p. 448;

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

Savva v. Republic (1980) 3 C.L.R. 675 at pp. 691-695.

5 Recourse.

Recourse against the decision of the respondent to promote the interested parties to the post of Senior Productivity Officer at the Productivity Centre in preference and instead of the applicant.

10 *E. Efsthathiou*, for the applicant.

Cl. Antoniadēs, Senior Counsel of the Republic, for the respondent.

P. Papageorghiou, for the interested parties.

Cur. adv. vult.

15 TRIANTAFYLLIDES P. read the following judgment. By means of this recourse the applicant challenges the decision of the respondent Public Service Commission to promote, instead of him, C. Constantinides and Th. Ioannou (the
20 Senior Productivity Officer at the Productivity Centre.

At its meeting on the 8th March 1977, and in the presence of the acting Director of the Productivity Centre Mr. H. Constantinou, the Commission, after it had interviewed the applicant and interested party Ioannou, but not, also,
25 interested party Constantinides who was unable to be present as he was abroad on a scholarship, decided to promote the two interested parties to the post of Senior Productivity Officer.

30 From the material which was placed before the Court it appears that the applicant and the interested parties were employed up to the Turkish invasion in July 1974 at the Productivity Centre and then they were seconded to "Merimna" (that is the Special Service for the Care and Rehabilitation of Displaced Persons).

From September 1974 till March 1976 the Director of the Productivity Centre was Mr. G. Iacovou who was, also, in charge of "Merimna". Then Mr. Iacovou went on an assignment abroad and as from April 1976 Mr. H. Constantinou became acting Director of the Productivity Centre and Mr. A. Kallimachos was placed in charge of "Merimna". 5

It has been contended by counsel for the applicant that it was unlawful for Mr. Constantinou to make the confidential reports for the year 1976 in respect of the two interested parties because both of them were at the time seconded to "Merimna" and Mr. Constantinou was as from April 1976 the acting Director of the Productivity Centre. 10

The legislative provisions applicable to confidential reports for public officers are section 45 of the Public Service Law, 1967 (Law 33/67) and, in relation, particularly, to seconded officers, section 3 of the State Officers (Temporary Regulating Provisions) Law, 1975 (Law 54/75). 15

In the light of the said legislative provisions I do not think that Mr. Constantinou was excluded from making the confidential reports in relation to the two interested parties for 1976. Even, if, however, I had found that the making of such reports by Mr. Constantinou was an irregularity I would have held that it was not of material nature vitiating the promotions of the interested parties. Useful reference, in this respect, may be made to the case of *Christou v. The Republic*. (1980) 3 C.E.R. 437, 448. 20 25

It has been, also, contended by counsel for the applicant that the respondent Commission acted under a misconception because what are stated in its relevant minutes regarding the comparison of the candidates do not correspond to the contents of the relevant confidential reports. 30

As it appears from the said minutes of the Commission there were taken into account the merits, qualifications, seniority, service, abilities and experience of the applicant and of the two interested parties, as well as the performance of the applicant and of interested party Ioannou when they were interviewed; interested party Constantinides was not interviewed, as he was abroad at the time. There were, also, 35

considered the personal files and annual confidential reports of the candidates and detailed reference was made in the minutes of the Commission to the careers of the candidates and to the contents of the confidential reports about them, as well as to the recommendations of Mr. Constantinou, as the Head of the Department concerned.

Having compared the relevant minutes, as a whole, of the respondent Commission with the contents of the confidential reports relating to the candidates it does not appear to me that the Commission has laboured under any material misconception in evaluating the candidates.

It has been further submitted by counsel for the applicant that he was much senior to interested party Ioannou and that, as such interested party was not otherwise superior to the applicant, the impression formed when the said interested party and the applicant were interviewed should not have been treated as a decisive factor leading to the selection of this interested party instead of the applicant.

As it appears from the minutes of the Commission the decision to promote interested party Ioannou was taken by a majority of three to two as the Chairman of the Commission and two of its Members were of the view "... that Mr. Theodoros Ioannou gave very satisfactory replies to questions put to him and generally he proved to be much better than Mr. Vias Livadas". On the other hand the remaining Members of the Commission "preferred Mr. Vias Livadas to Mr. Th. Ioannou, having regard to his seniority and longer service in the post of Productivity Officer."

It has been, on more than one occasion, pointed out by our Supreme Court that there should not be accorded undue and disproportionate importance to impressions formed at the interviews of the candidates (see, inter alia, in this respect, *Triantafyllides v. The Republic*, (1970) 3 C.L.R. 235, 245 and *Savva v. The Republic*, (1980) 3 C.L.R. 675, 691-695).

As in every material respect the applicant and interested party Ioannou were more or less equal as regards qualifications and merit and the applicant was much senior to the said interested party the respondent Commission ought to have given cogent reasons for disregarding the seniority

of the applicant, by a slight majority, merely on the basis of impressions formed at the interviews of the candidates, especially as the seniority and longer service of the applicant in the post of Productivity Officer were expressly referred to by the Head of the Department concerned in making his recommendations to the Commission. 5

I, therefore, have decided, in the circumstances, that the promotion of interested party Ioannou should be annulled as having been made in a defective manner resulting in excess of the powers on the part of the respondent Commission. 10

Regarding the promotion of interested party Constantinides I am of the view that the applicant, on whom the burden lay, failed to satisfy me that he was strikingly superior to such interested party, or, at least, equal to him in every other respect so that the seniority of the applicant could be treated as a factor that should have tipped the scales in his favour. It was, therefore, reasonably open to the Commission to decide to promote the said interested party instead of the applicant and, so, this recourse against his promotion has to be dismissed. 15 20

In the result this recourse succeeds in so far as interested party Ioannou is concerned and fails in so far as interested party Constantinides is concerned; and there will be no order as to its costs. 25

*Recourse succeeds in part.
No order as to costs.*