

1985 January 24

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ATHOS STAVRIDES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 98/83).

Public Officers—Promotions—Confidential reports—Though the whole career of the candidates had to be taken into account not wrong to give due weight to the more recent confidential reports.

5 *Public Officers—Promotions—Conviction of a candidate for a criminal offence not entailing lack of honesty or moral turpitude—Not punished for any disciplinary offence and no disciplinary proceedings instituted against him—Criminal conviction rightly not taken into account in*
10 *promoting him—Sections 44(1)(d) and 73(1) of the Public Service Law, 1967 (Law 33/67).*

Public Officers—Promotions—Head of Department—Recommendations—Special reasoning given by respondents for the non-adoption of, which consisted of their finding
15 *that the candidate not recommended was manifestly superior in merit—Seniority based on secondment to a temporary post—Not so substantial—Applicant failed to establish even mere superiority, let alone striking superiority which is necessary to lead to the conclusion that*
20 *the appointing authority has acted in excess or in abuse of powers.*

The applicant, an Animal Husbandry Superintendent

2nd Grade, was a candidate for promotion to the post of Animal Husbandry Superintendent 1st Grade. The Public Service Commission promoted the interested party to the above post and hence this recourse. Though the Head of Department recommended applicant for promotion the Commission did not adopt his recommendations because the interested party was "manifestly superior in merit". All the candidates possessed the qualifications required under the schemes of service; and with regard to seniority applicant had 4 years' seniority regarding the secondment to the temporary post.

Counsel for the applicant mainly contended:

- (a) That when examining the question of merit the respondents wrongly took into account only the two years preceding their decision and wrongly disregarded or failed to take into account the previous reports of the applicant according to which he was better than the interested party; and, thus, they failed to consider the whole career of the applicant.
- (b) That the sub judge decision should be annulled for lack of due inquiry as the respondent Commission, contrary to the provisions of section 44(1) (d), 58(1)(a), 58(1)(e) and 83 of the Public Service Law of 1967 (Law 33/67 failed to take into consideration that the interested party had been convicted * of a criminal offence on the 9th August, 1982 and, consequently, he ought not to have been promoted.
- (c) That the respondent Commission failed to give full reasons as to why they disagreed with the recommendations of the Head of Department.
- (d) That the applicant was senior to the interested party.

Held, (1) that though the whole career of the candidates

* The offence for which the interested party was convicted was one of assault and disturbance in a public place.

concerned had to be taken into account, it is not wrong to give due weight to the more recent of the confidential reports; accordingly contention (a) must fail.

- 5 (2) That though section 44(1)(d) of Law 33/67 provides that no public servant is promoted if he has been punished for any disciplinary offence of a serious nature during the two years prior to the intended promotion, section 73(1) provides that a
10 public servant is liable to disciplinary proceedings if—(a) he commits an offence of dishonesty or involving moral turpitude; (b) he commits an act or omission amounting to a contravention of any of the duties or obligations of a public officer; that in this case the interested party has not been
15 punished for any disciplinary offence, nor any disciplinary proceedings have been instituted against him; that, moreover, the offence for which he was convicted is not such that entails lack of honesty or moral turpitude or amounts to a contravention
20 of his duties as a public servant; and that, consequently, his criminal conviction is of no importance and was rightly not taken into account.
- 25 (3) That special reasoning has been given as regards the inability of the Commission to adopt the recommendations of the Head of the Department as regards to applicant.
- 30 (4) That as regards seniority, the applicant has a not so substantial seniority since it is based on secondment to a temporary post; that in any case, the seniority of the applicant over the interested party has been taken into account by the Commission as it appears from the relevant minutes, but the interested party was selected as he was better as
35 regards merit.
- 40 (5) That it was reasonably open to the respondent Commission to promote the interested party instead of the applicant who has failed to establish even mere superiority, let alone the striking superiority which is necessary to lead to the conclusion that

the appointing authority has acted in excess and/or in abuse of powers; that the sub judice decision was taken in accordance with the law and is duly reasoned; accordingly the recourse must fail.

Application dismissed. 5

Cases referred to.

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

Ioannou v. Republic, (1983) 3 C.L.R. 729 at p. 729 at p. 744;

Georghiou v. Republic (1975) 3 C.L.R. 153 at pp. 159-169; 10

Republic v. Georghiou (1976) 3 C.L.R. 74 at p. 82.

Recourse.

Recourse against the decision of the respondent to promote the interested party to the post of Animal Husbandry Superintendent, 1st Grade, in the Department of Agriculture, in preference and instead of the applicant. 15

Ch. Ierides, for the applicant.

R. Gavrielides, for the respondent.

Cur. adv. vult.

MALACHTOS J. read the following judgment. The applicant in this recourse claims— 20

(a) A declaration of the Court that the refusal and/or omission of the respondent Public Service Commission to promote him to the post of Animal Husbandry Superintendent, 1st Grade, Department of Agriculture, is null and void and of no legal effect whatsoever, and 25

(b) A declaration of the Court that the decision and/or act of the respondent Commission published in the Official Gazette of the Republic of the 4th February, 1983, to promote Georghios Kyriakou as from 1st December, 1983, instead of the applicant, is null and void and of no legal effect whatsoever. 30

The relevant facts of the case are as follows:—

On the 8th February, 1982, the Director-General of the Ministry of Agriculture and Natural Resources, wrote to the respondent Commission requesting the filling of one vacant permanent post of Animal Husbandry Superintendent, 1st Grade and, possibly, of a second one, which might be created as a result of a promotion from that post to the post of Senior Animal Husbandry Superintendent.

As a result, a list of fourteen candidates eligible for promotion was prepared and sent to the Chairman of the Departmental Board, together with their confidential reports and personal files who, in its turn, recommended six candidates for promotion in alphabetical order, including the applicant and the interested party.

The post of Animal Husbandry Superintendent 1st Grade, according to the relevant schemes of service, is a promotion post and among the qualifications required are:

- “(1) At least three years service in the post of Animal Husbandry Superintendent, 2nd Grade.
- (2)
- (3)
- (4) Diploma or certificate of a recognised college in Animal Husbandry or in a subject related to the activities of the Department of Agriculture, will be considered as an additional qualification.”

The respondent Commission met on the 16th November, 1982, to consider the said promotions. The Director of the Department of Agriculture, who was present at the meeting, expressed, inter alia, the following views as regards the candidates:

“Georghios Triseliotis who is an excellent employee, is recommended for promotion and also Athos Stavrides who is very good...”

Both the employees recommended as well as Georghios Kyriakou and Philippos Piscopos, have a diploma or certificate of a recognised college in Animal Husbandry or in a subject related to the activities of the

Department of Agriculture which, according to the scheme of service, is considered as additional qualification."

It should be noted here that the applicant in his last two reports is reported as "Very Good." 5

Having given his views, the Director of the Department of Agriculture left the meeting and then the respondent Commission proceeded to consider the candidates. As stated in its relevant minutes.

"The Commission examined the relevant facts from the Personal Files and Confidential Reports of the candidates and took into consideration the conclusions of the Departmental Board and the opinion and recommendations of the Director of the Department of Agriculture. 10 15

The Commission observed that Triseliotis and Kyriakou have the highest marks in the Confidential Reports of the last two years in which they were generally rated as "Excellent."

The Commission also took into consideration the qualifications of the candidates and their seniority. From the aspect of seniority, Triseliotis is the most senior having six years service in the post of Animal Husbandry Superintendent, followed by Stavrides, Kyriakou and Piscopos who have four years service in this post. The Commission then dealt in particular with the comparison of Stavrides and Kyriakou and noted that from the aspect of seniority Stavrides has precedence only as regards the secondment to the temporary post, as from 1st December, 1968, whereas Kyriakou was seconded to the same post as from 1st August, 1972. 20 25 30

In view of the above, the Commission adopted the recommendations of the Director as regards Triseliotis, but was unable to adopt his recommendations for Stavrides because Kyriakou is manifestly superior in merit. 35

In conclusion, having taken into account all the facts before it, the Commission considered that on the

basis of the established criteria in their entirety (merit, qualifications, seniority), Georghios Kyriakou and Georghios Triseliotis are superior to the other candidates and decided to promote them to the permanent (Ordinary Budget) post of Animal Husbandry Superintendent, 1st Grade, as from 1st December, 1982.”

Hence the present recourse, which is based, as stated therein, on the following grounds of law:

1. That the sub judice decision is illegal and/or was reached in excess and/or in abuse of power because:

(a) in accordance with law 33/67, the promotions of officers are decided on the basis of merit, qualifications, seniority and though in the case of the applicant all the requirements of the law were satisfied, nevertheless, the respondent Commission disregarded and/or did not take into consideration the merit, qualifications and seniority of the applicant;

(b) the respondent failed to select for promotion the best candidate and acted contrary to Law and to the decision of the Supreme Court in the case of *Michael Theodossiou v. The Republic*, 2 R.S.C.C. 44;

(c) the respondent failed to exercise its discretionary power and/or exercised this defectively and acted contrary to law and in abuse of power, as it disregarded the in all striking superiority of the applicant, as regards merit, qualifications and seniority;

(d) the sub judice decision is not duly reasoned and/or its reasoning is defective and wrong;

(e) the respondent wrongly interpreted the law and regulations, and

(f) the respondent took into consideration facts which ought not to have been taken into account and/or failed to take into account material facts and/or acted under a misconception of fact and/or there was no due inquiry.

The applicant, Athos Stavrides, attended the Pancyprrian Commercial Lyceum of Larnaca from 1952-1958, the American Academy Larnaca from 1958-1959, the

"Averofios" Agricultural School, Larissa, in Greece from 1960-1961; also he attended a Dairy Training Course F.A.O. Lebanon from 2nd March, 1968 to 29th June, 1968 and an International Course on Intensive Dairy Cattle Production and Extension Methods in Israel from 28th October, 1976 to 17th March, 1977. 5

The interested party, Kyriakou Georghios, attended the Greek Gymnasium Famagusta from 1953-1955, the American Agricultural and Industrial School of Salonica from 1955-1959 and an International Course on Pig Husbandry at Barneveld College, The Netherlands, from 22nd September, 1971 to 14th April, 1972. 10

Counsel for applicant submitted that the respondents when examining the question of merit, wrongly took into account only the two years preceding their decision and wrongly disregarded or failed to take into account the previous reports of the applicant according to which for the ten years prior to the promotion, excepting the last three before promotion, the applicant was better than the interested party. Thus, he argued, the respondent Commission wrongly failed to consider the whole career of the applicant and he referred to the case of *M. Ioannou v. The Republic* (1983) 3 C.L.R. 729, where at p. 744 a quotation was cited from the case of *Odysseas Georghiou v. The Republic* (1975) 3 C.L.R. 153 at page 159-60 to the effect that "in determining the merits of civil servants the whole career of a candidate has to be examined". He further submitted that the respondent Commission was wrong to prefer the interested party who did not possess an additional qualification as required by the schemes of service, his attendance at the American Agricultural and Industrial School at Salonica, from 1955-1959 not being an additional qualification, since the School was only equivalent to a Gymnasium. On the contrary, the applicant, having attended the "Averofios" Agricultural School, Larissa in Greece from 1960 to 1961, possessed the additional qualification required by the schemes of service. But even, if we assume, he added, that the interested party did possess the additional qualification, nonetheless, the overall picture of the applicant is so much better that he ought to have been promoted instead of the interested party. Moreover, 15 20 25 30 35 40

the applicant is also senior to the interested party. He also argued that in the present case though originally the interested party did not have as good reports as the applicant, for the last three years before promotion his confidential reports are better, being rated as "Excellent", whereas the applicant appears as being "Very Good".

His next ground was that the sub judice decision should be annulled for lack of due inquiry, as the respondent Commission, contrary to the provisions of section 44(1)(d), 58(1)(a), 58(1)(e) and 83 of the Public Service Law of 1967, Law 33/67, failed to take into consideration that the interested party had been convicted of a criminal offence on 9th August, 1982 and, consequently, ought not to have been promoted.

It should be noted here that the offence for which the interested party was convicted was one of assault and disturbance in a public place.

Finally, he argued that the respondent Commission failed to give full reasons as to why they disagreed with the recommendations of the Head of Department.

As regards the first argument of Counsel for applicant, that the whole career of a candidate must be taken into account and not only his recent performance, the legal position has been clarified by the Full Bench of this Court in the case of *The Republic v. Odysseas Georghiou*, (1976) 3 C.L.R. 74, where at page 82 we read:—

"We are in agreement with the learned trial Judge that the whole career of the candidates concerned had to be taken into account; this view has been propounded in, inter alia, *Georghiades and Another v. The Republic*, (1975) 3 C.L.R. 143, 150; but, in the judgment in that case it is stated (at p. 151) that it is not wrong to give due weight to the more recent confidential reports; and the importance of the more recent of such reports has been, also, recognised in *Jacovides v. The Republic*, (1966) 3 C.L.R. 212, 221, and may be derived, too, from the provisions of paragraphs (c) and (d) of subsection (1) of section 44 of Law 33/67."

As regards the second ground of law that the respondent

Commission wrongly considered the interested party as having an additional qualification, which he did not, as opposed to the applicant who did have such additional qualification, I must say that this is not correct. In appendix 4 of the Opposition, at p. 2, it is stated:

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“Next the Departmental Committee examined the lists of the candidates for promotion... and prepared a list of candidates who possess the required qualifications as provided by the relevant for the post scheme of service.”

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And para. (4) of the qualifications required by the scheme of service states: “Diploma or certificate of a recognised college in Animal Husbandry or in a subject related...). Even if it were to be considered that his attendance at the American Agricultural School of Salonica could not be regarded as additional qualification, as it is the argument of the applicant, still the interested party must be considered as possessing such additional qualification having attended an International Course on Pig Husbandry, at Barneveld College in the Netherlands from 22nd September, 1971 to 14th April, 1972.”

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As regards seniority, the applicant has a not so substantial seniority since it is based on secondment to a temporary post. In any case, the seniority of the applicant over the interested party has been taken into account by the Commission as it appears from the relevant minutes, but the interested party was selected as he was better as regards merit.

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As regards the next ground that a criminal conviction of the interested party was not taken into account by the respondent Commission and he was thus wrongly promoted, such argument cannot hold ground. Section 44(1)(d) of Law 33/67 provides that no public servant is promoted if he has been punished for any disciplinary offence of a serious nature during the two years prior to the intended promotion.

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Section 73(1) provides that a public servant is liable to disciplinary proceedings if—

(a) he commits an offence of dishonesty or involving moral turpitude;

5 (b) he commits an act or omission amounting to a contravention of any of the duties or obligations of a public officer.

In this case the interested party has not been punished for any disciplinary offence, nor any disciplinary proceedings have been instituted against him. Moreover, the offence for which he was convicted is not such that entails lack of
10 honesty or moral turpitude or amounts to a contravention of his duties as a public servant. Consequently, his criminal conviction is of no importance and was rightly not taken into account.

15 Finally, I would also dismiss the last ground that the sub judge decision is not duly reasoned. From all the material and documents before me I find that the decision is duly reasoned. A comparison between the applicant and the interested party and all relevant factors concerning
20 each one of them are stated with particular detail in the sub judge decision of 16th November, 1982. Special reasoning has also been given as regards the inability of the Commission to adopt the recommendations of the Head of the Department as regards the applicant.

25 In view of the above, I find that it was reasonably open to the respondent Commission to promote the interested party instead of the applicant who has failed to establish even mere superiority, let alone the striking superiority which is necessary to lead to the conclusion that the appointing authority has acted in excess and/or in abuse of powers.
30 The sub judge decision was taken in accordance with the law and is duly reasoned.

For all the above reasons, this recourse fails and is hereby dismissed.

There will be no order as to costs.

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*Recourse dismissed.
No order as to costs.*