

1986 September 25

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

LEONIDAS LEONIDOU.

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION.

Respondent

(Case No. 556/84).

Public Officers—Promotions—Qualifications—University degree not an advantage, if not envisaged as such in the scheme of service.

5 *Public Officers —Promotions —Confidential reports —The Public Service Law 33/67—Section 45(1)—The words “annual” and “annually” must be given their ordinary meaning—They do not mean that the report should cover a period of no less than 12 months—Absence of confidential report—Absence not due to officer’s fault—Such*
10 *absence does not preclude the officer from being considered for promotion.*

Public Officers—Promotions—Seniority—It does not prevail, if other things are not equal—Seniority of six and a half years—It does not prevail because unlike the applicant
15 *the interested party had been recommended for promotion by the Head of the Department.*

Public Officers—Promotions—Officers serving on probation—Entitled to be considered for promotion—The Public Service Law 33/67, sections 44 and 2.

20 *Public Officers—Promotions—Scheme of service—Scheme requiring “at least three years service in a post”—The service in such post need not be continuous.*

Public Officers—Promotions—Head of Department—Recommendations of—Cannot be disregarded without giving cogent reasons for doing so.

Words and Phrases: "Public Officer", "Public Office" and "Public Service" in section 2 of The Public Service Law 33/67. 5

The applicant challenges by means of this recourse the promotions of the interested parties to the post of Co-operative Officer, 1st Grade, in the Department of Co-operative Development. The applicant alleged that he is senior to interested party Neophytou by six and a half years, that he has a University degree in Economics, whereas none of the interested parties possesses a degree, that as regards merit he is superior to most interested parties as regards the confidential reports of 1979, whereas there can be no comparison, on account of applicant's absence on educational leave, between 1979 to 1983, that as regards 1983 the assessment of his services for the period 1.11.83 to 31.12.83 cannot be considered as a confidential report within the meaning of the law and that, therefore, was erroneously taken into account, that the recommendations of the Head of the Department were erroneous because he stated that he had no personal knowledge of the applicant's performance as he had worked under him for only nine months, whereas for interested party Neophytou he stated that he had such personal knowledge, though Neophytou had served for only five months as a Co-operative Officer 2nd Grade, that interested party Neophytou was serving at the time of his promotion on probation and, lastly, that Neophytou did not satisfy the requirement of the scheme of service of "at least three years in the post of Co-operative Officer, 2nd Grade," because he only had five months service prior to the sub judice decision and his period of service between 1.2.69 and 10.9.72 was wrongly taken into account. 10 15 20 25 30 35

Held, dismissing the recourse: (1) The applicant, as it transpired, did not obtain any University degree, but even if he had, it could not have been considered as an ad-

vantage since it is not stated to be so in the relevant scheme of service.

5 (2) Confidential reports are prepared annually (Section 45(1) of Law 33/67). There is nothing to suggest that the words "annual", "anually" have any other than their ordinary meaning, namely "for the year", "yearly", "recurring every year". They do not mean that an annual report to be valid must cover a period of no less than twelve months. It follows that the report relating to the applicant's service for the period 1.11.83 to 31.12.83 was correctly taken into consideration.

10 (3) The applicant ranks equal in merit with the interested parties. As regards interested party Neophytou in respect of whom there are no reports, one should observe that the absence of a report does not preclude an officer from being considered for promotion. The absence of such reports was not due to that officer's fault as in accordance with section 45(2) of Law 33/67 his report was due to be prepared in August 1984 in the form of a six monthly report submitted on every officer serving on probation.

15 (4) The seniority of the applicant over interested party Neophytou cannot prevail, because all other things were not equal, as Neophytou had been recommended for promotion by the Head of the Department, whilst the applicant was not. The recommendations of the Head of the Department cannot be lightly disregarded without giving cogent reasons for doing so.

20 (5) There is no merit in the argument that an officer serving on probation cannot be promoted. The main feature of the relevant section, i.e. section 44 of Law 33/67, appears to be the words, "public officer", which are defined in section 2 as "the holder, whether substantive or temporary or acting of a public office". Interested party Neophytou was not an unestablished officer serving in a temporary capacity, but the holder of a permanent post that qualified him for promotion under section 44.

25 (6) The relevant scheme of service requires "at least three years service in the post of Co-operative Officer, 2nd Grade". Such service, however, need not be conti-

nuous. It follows that interested party Neophytou, who had also served in the post from 1969 to 1972, satisfied the said requirement.

(7) The sub judice decision was reasonably open to the respondent Commission. 5

Recourse dismissed.

No order as to costs.

Cases referred to:

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

Frangos v. The Republic (1970) 3 C.L.R. 312; 10

Andreou v. The Republic (1979) 3 C.L.R. 379;

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

Economides v. The Republic (1973) 3 C.L.R. 410.

Recourse.

Recourse against the decision of the respondent to promote and/or post the interested parties to the post of Co-operative Officer 1st Grade in the Department of Co-operative Development in preference and instead of the applicant. 15

G. Triantafyllides, for the applicant. 20

A. Vladimirov, for the respondent.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that the decision of the respondent Commission to promote and/or post the interested parties, set out hereinbelow to the post of Co-operative Officer, 1st Grade, in the Department of Co-operative Development as from 1st August 1984 in preference and/or instead of the applicant is null and void and of no effect whatsoever. 25
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The said interested parties are the following:

1. Kyriakos Neophytou, 2. Ioannis Charalambides, 3.

Andreas Antoniadis, 4. Soteris Evangelou, 5. Photis Demetriades, 6. Michael Stylianou, 7. Panikos Mouzoura. 8. Nicos Nicolaides, 9. Savvas Taliotis, 10. Loucas Christodoulides and 11. Eleftherios Patsalos.

5 This post is a promotion post from the immediately lower post of Co-operative Officer 2nd Grade. There existed eleven vacancies and the Director-General of the Ministry of Commerce and Industry requested their filling with the approval of the Minister of Finance. In view of
10 their being promotion posts and in the light of the provisions of Regulation 3 of the Regulatory Orders, governing the establishment, competence and the method of action of Departmental Boards in accordance with section 36 of the Public Service Laws 1967-1983, such a Departmental
15 Board was set up in order to advise the respondent Commission in respect of the said promotions. Its report dated 6th June, 1984, was forwarded to the respondent Commission on the 8th June, 1984, which considered the said promotions at its meeting of the 17th July, 1985, at
20 which present was Mr. Erotokritos Chlorakiotis, the Commissioner of Co-Operative Development, whose statement is recorded in the relevant minutes (Appendix 7). In so far as relevant it reads:-

25 "On the basis of all that I have in mind and the criteria of the law, I recommend without hesitation the following officers:

30 1. Antoniadis Andreas who is a very good officer and serves in Nicosia town and rural district. He is assigned duties for the solution of problems relating to audit but he has contacts with the public and the members of the co-operative movement in general.

2. Patsalos Eleftherios who is a very good officer and serves at Larnaca.

35 3. Taliotis Savvas who is an excellent officer and serves at Paphos.

4. Demetriades Fotios who is a very good officer and serves in Nicosia.

5. Stylianou Michael who is a very good officer and serves at Limassol.

6. Christodoulides Loucas who is a very good officer and serves at Paphos.

7. Charalambides Ioannis who is a very good officer and serves in Nicosia. 5

8. Mouzouros Panikkos who is a very good officer and serves at Limassol.

9. Evangelou Sotiris who is a very good officer and serves in Nicosia. 10

10. Neophytou Kyriakos who is a very good officer and serves in Nicosia.

Nicos Nicolaides, Nicos Voskos and Platon Trapellides are all of about the same level. He distinguishes, however, as better, Nicolaides and Trapellides and he recommends that one of them be promoted to the 11th post. Nicolaides serves at Limassol, Trapellides at Larnaca and Voskos at Limassol. 15

As regards Leonidas Leonidou who serves in Nicosia, he has no personal knowledge of his performance because he was absent for four years abroad and returned towards the end of 1983. He has not been tested and there is no proof. 20

At this stage the Commissioner of Co-operative Development withdrew from the meeting. 25

The Commission then proceeded with the evaluation and comparison of the candidates.

The Commission examined the material factors from the file for filling the post, as well as from the personal files and the confidential reports of the candidates, and took into consideration the conclusions of the Departmental Board and the views and recommendations of the Commissioner of Co-operative Development. 30

As regards Leonidou, for whom the Commissioner 35

of Co-operative Development did not express views for the reasons mentioned hereinabove, the Commission considered him on the basis of the material before it, including the six monthly confidential reports for the period 15.9.1977 - 15.9.1979 and the confidential reports for the year 1979 and 1983 (the last two months).

The Commission adopted the recommendation of the Commissioner of Co-operative Development and chose for promotion the first ten recommended by him officers. For the 11th post the Commission considered Nicolaides as the most prevalent out of the two officers recommended by the Commissioner and chose him for promotion.

In conclusion, the Commission took into consideration all the material factors before it, decided on the basis of the accepted criteria in their totality (merit, qualifications, seniority) that the following are superior in general, to the other candidates to promote them as the most suitable for the permanent (Ordinary Budget) post of Co-operative Officer, 1st grade, in the department of Co-operative Development as from 1st August, 1984."

There follow the names of the eleven interested parties.

Before dealing with the various grounds of law relied upon on behalf of the applicant, I consider it useful to set out relevant extracts from the report of the Departmental Board dated 6th June, 1984 (Appendix 5) to which I have just referred and which was presided by Mr. Chloraikiotis, the Commissioner of Co-operative Development. It ascertained that there existed fourteen candidates who possessed the required qualifications, that is, at least three years in the post of Co-operative Officer, 2nd grade, Assistant Co-operative Officer, and clarified therein that it included in the list of candidates, candidate with serial No. 14, Neophytou Kyriakos, who possessed the required qualifications, having taken into consideration his service in the post of Assistant Co-operative Officer from 1st February 1969 to 9th September 1972. (three years and seven

months) as well as his service as Co-operative Officer 2nd grade, from 15th February 1984, until the 6th June, 1984 —the date its meeting took place, “given that his appointment on probation in the permanent (Ordinary Budget) post of Co-operative Officer 2nd grade, as from 15th February 1984, is not an obstacle.”.

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The main arguments of the applicant are as follows:

He has argued that the respondent Commission acted erroneously and in excess and/or in abuse of power in selecting the interested parties for promotion instead of him.

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In making the comparison with the interested parties, applicant has claimed that he is senior to interested party Kyriakos Neophytou by about six and half years, having been appointed to the post of Co-operative Officer 2nd grade, the applicant on the 15th September 1977 and interested party Neophytou on the 15th February 1984. All other interested parties were also appointed on the 15th September, 1977.

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As regards qualifications it is claimed that applicant is the holder of a degree in Economics of the University of Bonn obtained between 29th December 1979 and 31st October 1983, whereas none of the interested parties possesses a degree.

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Finally as regards merit, it is claimed that the applicant is superior to most interested parties as regards the confidential reports of 1979. Between 1979 to 1983 it is submitted that he cannot be so compared having been absent on educational leave abroad and that as regards 1983, the assessment cannot be considered as a confidential report within the meaning of the Law, having been assessed only from 1st November 1983 to 31st December 1983, that is, two months and that therefore such confidential report was erroneously taken into account.

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Finally it is claimed that the recommendations of the Head of Department are erroneous in the sense that he stated before the respondent Commission that he had no personal knowledge of the applicant's performance as he

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had worked under him for only nine months, since he was abroad and had returned during the end of 1983; but on the other hand he was able to recommend interested party Neophytou for promotion who was appointed to the post of Co-operative Officer 2nd grade on the 15th February 1984, and had only served for five months. Therefore, it is contended the promotions must be annulled on the ground that the recommendations of the Head of Department, as erroneous, were wrongly taken into account.

10 From the perusal of the personal files which are before me, it transpires that as regards qualifications, though the applicant was indeed studying at the University of Bonn from 29th December 1979 to 31st October 1983, he nonetheless did not obtain any degree of any kind, as he alleged, having followed only six semesters of the twelve semesters, which is the minimum duration for a course of Economics, leading to a degree. Consequently his qualifications are no better than the qualifications of the interested parties.

20 But even if he had obtained higher qualifications such could not be considered as an advantage over the other parties since they are not expressly stated to be so by the relevant scheme of service. See *Papadopoulos v. Republic* (1982) 3 C.L.R. 1070 at pp. 1075-6:

25 "As I had occasion to observe in *Larkos v. The Republic* (1982) 3 C.L.R. 513, possession of academic qualifications, additional to those required by the scheme of service, is not a distinct consideration meriting separate examination. It is one of many relevant factors that serve to paint the picture of a candidate's suitability for promotion: at the highest, they may confer a marginal advantage but, certainly, they do not specifically enhance the claims of the holder to promotion. Additional qualifications to those laid down in the scheme of service confer a distinct advantage only where they are specified in the scheme of service as an advantage, not otherwise."

40 As regards merit, from the file of the confidential reports, it transpires that all interested parties except inte-

rested party Neophytou in respect of whom there are no reports, are rated as "Very Good" for the years 1982 and 1983. As regards the applicant there is a confidential report on his performance from 1st November 1983, to 31st December, 1983, but it is the submission of the the applicant that this is not a proper report. 5

Section 45(1) of the Public Service Law 1967 (Law No. 33 of 1967) provides that confidential reports are prepared on all officers annually and that they "shall be submitted not later than the 31st day of January each year". 10

Nothing is provided either in the Public Service Law or the General Orders preserved by virtue of section 86(1) of the aforesaid law that the words "annual", "annually" have any other than their ordinary meaning that is "for the year", "yearly", "recurring every year"; they do not mean that an annual report to be valid must cover no less than twelve full months. There is no provision that a person who has worked for less than one full year, say for eleven months, is not entitled to a report in respect of his services for that particular year. I consider therefore that the confidential report of the applicant in respect of 1st November 1983, to 31st December 1983, was correctly taken into account. 15 20

The next available report for the applicant is for the year 1979 in which he was also rated as very good. 25

From the overall picture presented by the parties, I believe that the applicant is not better but ranks equal in merit to the interested parties.

As regards interested party Neophytou in respect of whom there are no reports, this is due to no fault of his as such were in accordance with section 45(2) of Law No. 33 of 1967, due to be prepared in August 1984 in the form of six monthly confidential reports which are submitted on every officer who is serving on probation. And on the authority of *Andreas Frangos v. Republic* (1970) 3 C.L.R. 312 at 325 the absence of a confidential report is not a factor precluding a candidate/officer from being considered for promotion. 30 35

Finally, as argued, whereas all interested parties including the aforesaid Neophytou were recommended for promotion, the Head of Department was not able to give any recommendations in respect of the applicant who had
5 been absent abroad. From the relevant personal file of interested party Neophytou it transpires that from 15th November 1961 to January 1969, he was employed as Auditor of Co-operative Societies in the Audit and Supervision Fund; from 1st February 1969 to 10th September
10 1972, he was employed in the Department of Co-operative Development as Assistant Co-operative Officer; from 1st January 1980, until January 1984, he again worked as Auditor of Co-operative Societies and finally on 14th January 1984, he was appointed to the post of Co-operative
15 Officer, 2nd Grade in the Department of Co-operative Development.

The aforesaid fund was established by Rule 92 of the Co-operative Societies Rules (see Subsidiary Legislation Vol. I, p. 426) which were made under section 54(1) (m)
20 of the Co-operative Societies Law Cap. 114.

Under Rule 92 the Fund is administered and controlled by the Registrar of Co-operative Societies. It is clear to me therefore that interested party Neophytou was working while at the Fund under the control of the Commissioner
25 who could thus have had sufficient knowledge of his abilities in order to give the recommendation given. (See *Andreou v. Republic* (1979) 3 C.L.R. 379 at p. 389).

From the above I conclude that it was reasonably open to the respondent Commission to promote the interested
30 parties instead of the applicant who has failed to establish the requisite striking superiority necessary in order to justify any interference by the Court in the sub judice decision. As regards qualification, merit, seniority, he is more or less the same to all interested parties except Neophytou over whom he is senior by about six and half years,
35 but contrary to all interested parties he has not been recommended for promotion and his seniority over Neophytou cannot thus prevail, all other things not being equal. In any case in accordance to well established principles of
40 administrative law the recommendations of the Head of Department cannot be lightly disregarded without giving

cogent reasoning for doing so. (See *Theodossiou v. Republic*, 2 R.S.C.C. 44).

As regards interested party Neophytou, the following further arguments were put forward.

It is claimed that from the minutes of the Departmental Board it transpires that certain reservations were expressed as regards the fact that he was serving on probation, in view of which, it is the allegation of the applicant, he should not have been promoted. 5

It is true that Neophytou was at the time of his promotion serving on probation (for two years). It also transpires that upon his said promotion to 1st grade, he remained on probation for the remainder of the two year period. 10

I find no merit in the argument that an officer serving on probation cannot be promoted. 15

The relevant section in the Public Service Law 1967 (Law No. 33 of 1967) is section 44 which provides that:

“(1) No public officer shall be promoted unless -” and proceeds to set down the requirements and mode of effecting promotions. Nowhere therein is provided that officers serving on probation are not entitled to promotion. The main feature of the section appears to be the words “public officer” which are defined in the interpretation section, section 2 as: 20 25

“the holder, whether substantive or temporary or acting of a public office.”

“Public office” being “an office in the public service”, and “public service”:

“means any service under the Republic other than the judicial service of the Republic or service in the Armed or Security Forces of the Republic or service in the office of Attorney-General of the Republic or Auditor-General or Accountant-General or their Deputies or service in any office in respect of which 30 35

other provision is made by law or service by persons whose remuneration is calculated on a daily basis;"

5 I consider that there appears to be some misunderstanding in the matter on the part of the applicant because he bases his argument on the fact that a candidate such as the applicant serving on a permanent basis must be preferred to an unestablished officer serving in a temporary capacity. This may be so, however, interested party Neophytou is not an unestablished officer serving in a temporary capacity but was in fact before his sub judge promotion the holder of a permanent (Ordinary Budget) post in the public service, such that qualifies him as entitled to promotion under section 44. I consider therefore that such argument of the applicant is without substance and must thus fail.

15 Lastly it is claimed that Neophytou did not satisfy the requirement of the scheme of service of "at least three years service in the post of Co-operative Officer, 2nd grade." because he only had five months service prior to the sub judge decision and that his prior service between 1st February 1969 to 10th September 1972, was wrongly taken into account.

25 I find that this argument must fail also. What is provided by the relevant scheme of service is for "at least three years service in the post of...". It is not provided for continuous service and I consider that the fact that there is a gap in between does not alter the fact that both times i.e. from 1969 to 1972 and since 15.2.84, he did "serve" in that particular post within the meaning of the scheme of service. In any event I see no difference between the case of the interested party who was away because he resigned and the applicant who was away for three years on educational leave—even if educational leave may in certain circumstances be regarded as service up to two years. though not so in the present case of the applicant.

35 See *G. Economides v. Republic* (1973) 3 C.L.R. 410 at p. 412-414.

For the reasons stated above I find that it was reasonably open to the respondent Commission to promote the inte-

rested parties instead of the applicant who has failed to establish any striking superiority necessary for justifying any interference with the sub judice decision which was in the circumstances taken properly and in accordance with the law. This recourse thus fails and is hereby dismissed with no order as to costs. 5

*Recourse dismissed.
No order as to costs.*