

1986 February 19

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

NICOS LOUCAIDES,

Applicant,

v.

THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 342/82).

Public Officer—Promotions—Striking Superiority—It must arise on consideration of all factors—Confidential Reports—They are a prime indicator as to ability assume the duties of a higher post—Seniority—It can never on its own compose a case of striking superiority.

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The applicant impugns by means of this recourse the promotion of the six interested parties to the post of Senior Co-operative Officer on the ground that the respondents disregarded applicants superiority to the interested parties.

The Head of the Department, who expressed his views to the Commission, rated poorly the capabilities of the applicant and refrained on that account from recommending the applicant for promotion.

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The Confidential reports reveal the interested parties as more competent than the applicant and are wholly consistent with the views of the Head of the Department.

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An attempt to challenge the validity of the Regulations governing the setting up and functioning of the Departmental Committee was not pursued.

Held, dismissing the recourse (1) The applicant did not establish a case of "striking superiority" over the interested parties. For superiority to be striking it must arise

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on consideration of all factors, i.e. merits, qualifications, seniority. Confidential reports are a prime indicator of ability to assume the duties of a higher post. Seniority can never on its own compose a case of striking superiority. Applicant's seniority, long though it was, did not make it incumbent on the respondents to promote him in preference to the interested parties.

(2) The recourse is exclusively directed against the sub-judice decision and, therefore, applicant's complaint that there was an unjustifiable omission on the part of the Minister of Finance to initiate the process of filling the post cannot be examined (*Georghiou v. Electricity Authority of Cyprus* (1965) 3 C.L.R. 177 distinguished).

Recourse dismissed.

No order as to costs.

Observations of the Court: Irrespective of the merits of the contention as to the validity of the Regulations concerning the Departmental Committee, the deliberations of such committee did not prejudice the applicant as the applicant was one of the persons recommended by the Committee and the P.S.C. in no way relinquished its power to select the candidates best suitable for promotion.

Cases referred to:

Christoudias v. The Republic (1984) 3 C.L.R. 657;

Spanos v. The Republic (1985) 3 C.L.R. 1826;

HiiSavva v. The Republic (1982) 3 C.L.R. 76;

HadjiIoannou v. The Republic (1983) 3 C.L.R. 1041;

Georghiou v. Electricity Authority of Cyprus (1965) 3 C.L.R. 177.

30 Recourse.

Recourse against the decision of the respondent to promote the interested parties to the post of Senior Co-operative Officer in preference and instead of the applicant.

N. Clerides, for the applicant.

N. Charalambous, Senior Counsel of the Republic,
for the respondent.

Cur. adv. vult.

PIKIS J. read the following judgment. In this recourse we are required to focus attention on the validity of a decision of the Public Service Commission (1) whereby the six interested parties were promoted to the post of Senior Co-operative Officer in preference to the applicant. The appointment of another appointee, the seventh, is not challenged.

The respondents after examination of the service record of the candidates, including their confidential reports and due consideration of the views of Mr. Chlorakiotis, the officer in charge of the Department of Co-operative Development, selected the interested parties as best suitable for promotion. The essence of the challenge to the decision mounted by this recourse is that respondents abused their powers, an abuse stemming from the disregard of the superiority of the applicant to the interested parties, on balancing the rival merits of the parties.

A belated attempt to question the validity of the Regulations governing the setting up and functioning of the departmental committees was not pursued. Earlier the Court had ruled the contention could not be taken cognizance of in the absence of amendment of the application and as none was sought the matter ended at that. Irrespective of the merits of possible submissions on the validity of such Regulations the deliberations of the departmental committee, in this case, in no way prejudiced the rights of the applicants. He was among the candidates recommended as eligible for promotion. Further the P.S.C. in no way relinquished its statutory power to select the candidates best suitable for promotion by reference to the relevant criteria, merit, qualifications and seniority(2). Apart from administrative records on the performance of the candidates in the service, they received the views of Mr. Chlorakiotis in his capacity as Head of the Department of Co-

(1) Taken on 26.5.1982.

(2) *Christoudias v. The Republic* (1984) 3 C.L.R. 657.

operative Development. Unlike the interested parties, Mr. Chlorakiotis rated poorly the capabilities of the applicant and refrained, on that account, from recommending him. The short-comings of the applicant were particularly prominent in the area of initiative.

The facts relevant to the suitability of the candidates for promotion do not support the contention of the applicant that he was superior to the interested parties and are certainly inconsistent with the contention of striking superiority". The confidential reports reveal the interested parties as more competent than applicant and are wholly consistent with the recommendations of the Head of the Department. Confidential reports are, as often said, the first pointer to the capabilities of a party and a prime indicator of ability to assume the duties of a higher post. The seniority of the applicant over the interested parties, long though it was, did not make it incumbent on the respondents to promote him in preference to the interested parties. In any event, seniority can never on its own compose a case of striking superiority. For superiority to be striking it must arise on consideration of all factors reflecting the worth of the candidate, merits, qualifications and seniority (1). The facts before me lend no support whatever to the case of applicant for striking superiority. It was reasonably, at the least, open to the respondents to promote, in the light of the material before them, the interested parties.

The complaint that there was an unjustified omission on the part of the Ministry of Finance to initiate the process of filling the post, cannot be examined in these proceedings. The recourse is exclusively directed against the sub judice decision of the P.S.C. The present case is distinguishable from that of *Tatianos Georghiou v. Electricity Authority of Cyprus* (2) where the decision to abolish a post had direct repercussions on the deliberations and impending decision of the appointing body and as such could not be

(1) *Spanos v. The Republic* (1985) 3 C.L.R. 1826.
Hadjisavva v. The Republic (1982) 3 C.L.R. 76.
Hadjiannou v. The Republic (1983) 3 C.L.R. 1041.

(2) (1965) 3 C.L.R. 177, 184, 185.

extricated therefrom. The validity of the decision challenged is in no sense dependent on the timing of the request to seek the filling of the vacant posts.

For the above reasons the recourse is dismissed. Let there be no order as to costs.

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Recourse dismissed.
No order as to costs.