

1986 October 3

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

LEONIDAS LEONIDOU.

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondents.**(Case No. 856/85).*


---

*Public Officers—Promotions— Qualifications— Additional, but not envisaged as an advantage in the scheme of service— Do not have a decisive effect.*

*Public Officers—Promotions—Head of Department—Recommendations of—Lack of knowledge of candidate not an obstacle preventing him on reporting on the candidate, provided he makes the necessary inquiries in his department.* 5

*Public Officers—Promotions— Confidential reports— Report in respect of the last two months of a year—As the applicant was absent abroad for studies during the first 10 months of the year, the Court fails to see what could be done other than reporting on him for such period as he was at work.* 10

The applicant, who by means of this recourse challenged the validity of the promotion of the two interested parties to the post of Co-operative Officer 1st Grade, complains that the respondents failed to carry out a due inquiry, that they attached inordinate importance to the recommendations of the Head of the Department, whereas none ought to have been attached, as he had no personal knowledge of the applicant, that they failed to attach the im- 15 20

portance due to the superior qualifications of the applicant and that they failed to direct their attention to the fact that the confidential report on the applicant for the year 1983 was compiled by reference to two months' service only.

5 It must be stated that between 29.12.79 and 31.10.83 the applicant was absent from his duties for the purpose of pursuing studies abroad. As a result he acquired a certificate of studies in Economics of the University of Bonn and gained knowledge of the German language.

10 *Held, dismissing the recourse:* (1) The suggestion that the respondents failed to hold a due inquiry into the facts relevant to the exercise of their discretionary powers remains unsubstantiated.

15 (2) The lack of confidential reports on the applicant for the period of his absence was inevitable. The fact that the report for 1983 was based on his performance during the last two months of the year was within the knowledge of the respondents. The Court fails to see what could be done other than report on the applicant for  
20 such period as he was at work.

(3) Applicant's additional qualifications could not have a decisive effect in the absence of a stipulation in the scheme of service that they conferred an advantage on the holder. There is nothing to suggest that the respondents did not accord to such qualification such significance as might reasonably be given them in the circumstances.  
25

(4) As it is often the case Heads of Departments have no personal knowledge of subordinate personnel, but they can report on them, provided they make appropriate inquiries in their department. There is nothing to suggest that there was a failure to carry such inquiry in this case.  
30

(5) The submission that the respondents confined their inquiry to the performance of the candidates during the last three years is unfounded.  
35

(6) In the light of the material before the respondents

the selection of the interested parties was reasonably open to them.

*Recourse dismissed.*

*No order as to costs.*

**Cases referred to:**

5

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

*Thalassinos v. The Republic* (1972) 3 C.L.R. 293;

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

*Sosilos v. The Republic* (1984) 3 C.L.R. 1133.

**Recourse.**

10

Recourse against the decision of the respondents to promote 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.

*A. S. Angelides*, for the applicant.

15

*A. Papasavvas*, Senior Counsel of the Republic, for the respondents.

*Cur. adv. vult.*

PIKIS J. read the following judgment. The subject of review in these proceedings is the decision of the Public Service Commission of 8.7.85 whereby the interested parties, namely, N. Voskos and P. Trapelides, were promoted to the post of Co-Operative Officer 1st Grade. The applicant, an unsuccessful candidate for the same post, challenges the decision claiming it is invalid for lack of due inquiry, as well as failure to appreciate the worth of the candidates in its true perspective, particularly that of applicant.

20

25

The three of them, applicant and the two interested parties, were the only candidates recommended by the departmental committee to be eligible and suitable for promotion to the aforementioned post (see report of 30.5.85). They expressed no preference for any one of the three, listing their names in order of age.

30

Before deliberating on the selection to be made the respondents heard at their invitation the views of the Commissioner of Co-Operative Development on the suitability of the candidates for promotion. There were two vacant posts to be filled. The foremost qualification for promotion was three years service in the post of Co-Operative Officer 2nd grade, a qualification possessed by all three candidates appointed to this post on the same day, viz. 15.9.77. The other qualifications required by the scheme of service were -

- (a) Very good knowledge of the theory and practice of co-operative organization and the legislation relevant to Co-Operative Development.
- (b) Administrative and organizational abilities, sense of responsibility, initiative, credibility, judgment and ability to maintain good relations with officers and members of the co-operative movement and the public at large.

It is acknowledged all three parties had the necessary qualifications and enjoyed equal seniority in the service.

The Commissioner of the Co-Operative Development recommended the interested parties as best suitable for promotion. After his departure the respondents examined the confidential reports on the parties and personal files, making specific reference, by way of example, to the confidential reports on the parties for the last three years. After reminding themselves of the statutory evaluation criteria for promotion, namely, merit, qualifications and seniority, they selected the interested parties who were in consequence promoted.

Applicant contends the decision is defective for failure on the part of the respondents to carry out an adequate inquiry into the value of the services of each candidate, their qualifications and abilities. Also they complain that respondents attached inordinate importance to the recommendations of the head of the department, whereas none ought to have been attached, as he had no personal knowledge of the applicant. Furthermore, in reaching their decision respondents are charged with failure to attach the

importance due to the superior qualifications of the applicant and that they failed to direct their attention to the fact that the confidential report on the applicant for the year 1983 was compiled by reference to two months' service only. It must be stated that between 29.12.79 and 31.10.83 applicant was absent from his duties for the purpose of pursuing studies abroad. Through these studies he acquired a certificate of studies in Economics of the University of Bonn and gained knowledge of the German language. Although the scheme of service did not require either of these qualifications as necessary for promotion, or as conferring an advantage, applicant laid emphasis on these qualifications in the context of his submission that the respondents overlooked or failed to pay due regard to his superior academic qualifications.

Having carefully considered the complaints made, I find them untenable leaving the validity of the sub judice decision intact. The suggestion that respondents failed to hold a due inquiry into the facts relevant to the exercise of their discretionary powers, remains unsubstantiated. From the material before me it appears respondents inquired into every fact relevant to their task and addressed themselves correctly to the criteria for promotion in the public service. The lack of confidential reports on the applicant for the period of his absence was inevitable. That the confidential report on the applicant for the year 1983 was based on his performance during the last two months of the year was within the knowledge of the respondents. I fail to see what could be done in the circumstances other than report on the applicant for such period as he was at work.

The additional qualifications acquired by the applicant could not have had any decisive effect on his claims to promotion in the absence of a stipulation in the scheme of service that they conferred an advantage on the holder.<sup>1</sup> The respondents were aware of the additional qualifications of the applicant and there is nothing before me to suggest they did not accord to them such significance as might reasonably be given them in the circumstances.

<sup>1</sup> See, inter alia, *Papadopoulos v. The Republic* (1982) 3 C.L.R. 1070.

Lack of personal knowledge, on the part of the Commissioner, of the applicant was not, as submitted, a factor preventing him from expressing an opinion on the value of his services and suitability for promotion.

5 As it is often the case heads of departments have no personal knowledge of subordinate personnel. Nevertheless they can report on them provided they make appropriate inquiries in their department, enabling them to form an opinion on the value of their services<sup>1</sup>. There is nothing  
10 before me to suggest that Mr. Chlorakiotis failed to carry out such inquiry.

In making his recommendations it is evident from the minutes of the respondents the Commissioner relied to a large extent on the confidential reports on the parties. The  
15 emphasis laid by the schemes of service on practical experience put, be it to a small extent, the interested parties in an advantageous position vis-a-vis the applicant who was for a considerable period of time absent from work. It could be argued that such advantage did, in view of the stress laid by the scheme of service on practical experience,  
20 counterbalance the advantage secured by the applicant from the acquisition of his extra academic qualifications; though no hard and fast rule can be laid down in this regard. The recommendation of the head of the department  
25 cannot be faulted on any basis. As such, it carried the weight ordinarily due to such recommendations, making the choice of the interested parties more than reasonably open to the respondents.

I cannot agree with the submission that the respondents  
30 attached undue weight to the performance of the parties during the last three years. Reference to confidential reports on the parties for those years was, as indicated in the minutes of the respondents by way of example. They did not confine their inquiry to those three years. Had they  
35 done so applicant might conceivably have a legitimate complaint<sup>2</sup>.

<sup>1</sup> See, inter alia, *Thalassinos v The Republic* (1972) 3 C.L.R. 293.  
*Spanos v The Republic* (1985) 3 C.L.R. 1826

<sup>2</sup> *Sosilos v The Republic* (1984) 3 C.L.R. 1133.

Having regard to the inquiry carried out by the respondents and the material before them it was, I conclude, reasonably open to them to select the interested parties. In consequence, the recourse is dismissed. The decision to appoint the interested parties is, in accordance with Article 146.4 (a) of the Constitution, confirmed. Let there be no order as to costs. 5

*Recourse dismissed.*  
*No order as to costs.*