

1986 February 22

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

MICHAEL MAVRONICHIS,

Applicant.

v.

THE INDUSTRIAL TRAINING AUTHORITY.

Respondent

(Case No 478/81)

*Public Authority—Promotions—Qualifications envisaged as an
advantage in the scheme of service—Submission that they
were rightly disregarded as the duties of the post in
question were below the level of such qualifications—
5 Reasons why such an approach cannot be upheld—Sub
judice decision not reasonably open to respondent.*

By means of this recourse the applicant, who had much
higher qualifications (envisaged as an advantage in the
scheme of service) than the interested party challenges the
10 latter's promotion to the post of "Head of Accounts
Section"

Counsel for the respondents argued that the interested
party was rightly selected, because the duties of the post
were below the level of applicants qualifications and as
15 the latter was ambitious the sub judice post would not
offer him satisfaction.

Held, annulling the sub judice decision: (1) The sub-
mission of counsel for the respondents cannot be upheld
Such an approach, if upheld, will be calamitous for all
20 those, who because of scarcity of jobs they are praise-
worthily prepared to be employed even at posts below
the level of their qualifications.

(2) Applicant's higher qualifications, envisaged as an advantage in the scheme of service, rendered him strikingly superior to the interested party. It follows that the sub judice decision was not reasonably open to the respondent.

Sub judice decision annulled.

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No order as to costs.

Recourse.

Recourse against the decision of the respondent to appoint the interested party to the post of Head of Accounts Section.

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*E. Efstathiou with C. Anastassiades and N. Styliani-
dou (Miss), for the applicant.*

M. Spanos, for the respondent.

Cur adv. vult.

TRIANAFYLLIDES P. read the following judgment. By means of the present recourse the applicant is challenging the decision of the respondent, on the 2nd November 1981, to appoint Cleanthis Ioannou (to be referred to hereinafter as the "interested party") to the post of "Head of Accounts Section."

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After the filing of the present recourse the interested party, due to personal reasons, submitted his resignation from the post in question, which the respondent accepted on the 26th October 1982.

Then the said post which had, thus, become vacant was abolished by a decision of the Council of Ministers, dated the 3rd November 1983, and a new post was created in its place, namely that of "Head of Financial Management".

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Counsel for the respondent submitted that as a result of these developments the applicant was deprived of a legitimate interest entitling him to proceed further with his present recourse, but, by a decision which I gave on the 6th June 1984,* and the contents of which should be treated as being incorporated in the present judgment, this sub-

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* See (1986) 3 C.L.R. 1427.

mission was not sustained and, thus, this case was heard, and will now be determined, on its merits.

5 In this respect counsel for the applicant had drawn my attention to paragraph (e) of the relevant scheme of service, which, in relation to the required qualifications for the post concerned, provides that "A University diploma or degree or equivalent qualification in an appropriate subject, i.e. Economics, Commercial Subjects, Business Administration etc. or membership of a recognized body of professional
10 Accountants will be treated as an advantage"; and counsel for the applicant went on to submit that in view of the much higher, in comparison to those of the interested party, qualifications of the applicant, the appointment of the interested party, instead of the applicant, was not reason-
15 ably open to the respondent.

As it appears from a comparative table showing the qualifications of the applicant and of the interested party, which was produced by counsel for the respondent, the applicant is an Associate Member of the Association of
20 International Accountants, an Associate Member of the Institute of Administrative Accountants, an Associate Member of the Association of Cost and Executive Accountants (A.C.E.A.), a Member of the Association of Accounting Technicians (M.A.A.T.), a Member of the Institute of
25 Commercial Management (M. INST.C.M.) and a Member of the Institute of Accounting Staff (M.I.A.S.), whereas the interested party possesses the Cyprus Certificate for the English Language and had passed the examinations in Book-Keeping (Stage II) of the Royal Society of Arts.

30 Counsel for the respondent had agreed that the applicant possessed higher qualifications than the interested party, but he argued that the interested party was rightly preferred for appointment because the duties of the post were below the level of the applicant's qualifications and,
35 as he was ambitious, his appointment to the post in question would not offer him satisfaction at all and this would have adverse repercussions on the performance of his duties, whereas the interested party, even with his lower qualifications, was more suitable, especially as he

would perform his duties with greater "job satisfaction" than the applicant.

I cannot accept as correct the view that a highly qualified candidate can be bypassed in favour of a less qualified candidate because the qualifications of the highly qualified candidate are too many for the duties of the particular post and he may not get as much job satisfaction performing them as would get the less qualified candidate. If such an approach is upheld and prevails it will be calamitous for all those who because of scarcity of jobs they are praiseworthily prepared to be employed even at posts below the level of their qualifications. 5 10

In my opinion the disregard, without any real justification, by the respondents of the by far higher qualifications of the applicant, which by virtue of the scheme of service had to be treated as an advantage in his favour, and which in any event rendered him strikingly superior to the interested party, has to lead to the conclusion that the decision to appoint the interested party, instead of the applicant, was not reasonably open to the respondent. 15 20

In the light of all the foregoing the sub judge decision is annulled; but I shall not make any order as to its costs.

Sub judge decision annulled.
No order as to costs. 25