

1986 November 18

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

THEODOULOS PANTAZIS,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION.

*Respondent.*

(Case No. 471/79).

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*Public Officers—Promotions—First entry and promotion post—  
Seniority—Not a decisive factor, but in this case could  
not have been lightly disregarded as it was directly refer-  
able to “experience”, which was a requirement under the  
scheme of service—Head of Department—Recommendations of—  
Contrary to applicant’s confidential reports—  
Reliance on such recommendations, and disregard of ap-  
plicant’s seniority and of fact that he held a higher rank  
in the service than that of the interested party—Sub judice  
promotion annulled for lack of due inquiry.*

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By means of this recourse the applicant challenges the promotion of the interested party to the permanent post of Director of the Department of Geological Survey, which is a first entry and promotion post.

The parties are more or less equal in merit and academic qualifications. The applicant is senior to the interested party by holding at the time of the sub judice decision a higher post in the hierarchy and by having an altogether longer service in the Public Service. The interested party was recommended for promotion by the Head of the Department, the Director-General of the Ministry, who, notwithstanding applicant’s excellent confidential

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reports, presented at the same time the applicant as good for nothing.

5 It must be noted that one of the requirements of the scheme of service for the post in question is "administrative ability and experience".

10 *Held, annulling the sub judice decision:* (1) Though seniority as such is not a decisive factor in cases concerning a first entry and promotion post, nevertheless it could not have been lightly disregarded as being a factor directly connected and referable to the applicant possessing greater "experience", which is one of the requirements of the scheme of service for the post in question. As it has been held "the notion of experience must reasonably be taken to include that of seniority" (*Ieride v. The Republic* (1980) 3 C.L.R. 165); and as it has, also been held "experience" contains the notion of knowledge acquired through acting in a certain capacity and cannot be interpreted as amounting merely to knowledge acquired through observation and study (*Papapetrou v. The Republic*, 2 R.S.C.C. 61).

15 (2) What tipped the scales in favour of the interested party was the recommendations of the Head of the Department, which were contrary to applicant's confidential reports. No reasons were given why such reports were disregarded.

25 (3) The fact that the applicant was holding at the time a post senior to the interested party appears to have been, also, disregarded.

30 (4) It follows that the Commission in relying only on such recommendations and disregarding applicant's seniority and the fact that he was holding a post higher in rank than that of the interested party failed to carry out a due inquiry.

35 *Sub judice decision annulled.*  
*£30.- costs in favour of applicant*

## Cases referred to:

*Ierides v. The Republic*, (1980) 3 C.L.R. 165;

*Papapetrou v The Republic*, 2 R.S.C.C. 61;

*Skapoullis and Another v. The Republic* (1984) 3 C.L.R. 554.

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## Recourse.

Recourse against the decision of the respondent to promote the interested party to the post of Director of Geological Survey in preference and instead of the applicant.

*K. Michaelides*, for the applicant.

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*G. Erotocritou (Mrs.)*, Senior Counsel of the Republic, for the respondent.

*G. Cacoyannis*, for the interested party.

*Cur. adv. vult.*

MALACHTOS J. read the following judgment. The applicant by this recourse seeks a declaration of the Court that the decision of the respondent Commission to promote the interested party George Constantinou to the permanent post of Director of the Department of Geological Survey, as from 1.1.80 instead of the applicant, is null and void and of no legal effect whatsoever.

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According to the relevant scheme of service, the post of Director of the Department of Geological Survey is a first entry and promotion post and the holder is responsible for the geological, geochemical and geophysical survey of the island and for the administration of the Department. He advises the Government on mineral resources and other geological matters and the mining public on prospecting techniques; he also performs any other duties which may be assigned to him.

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The qualifications required are a university diploma or degree in geology, extensive experience in geological survey work and mineral deposits assessment, a good knowledge of mining geology and hydrogeology, administrative ability

and experience and a very good knowledge of English.

The applicant entered the Civil Service on 4.12.1957 as an Agricultural Superintendent (soil Surveyor). On 15.6.61 he was appointed to the permanent post of Geologist in the Department of Geological Survey and on 1.1.1968 he was promoted to the permanent post of Geologist 1st Grade. On 1.4.1974 he was further promoted to the post of Senior Geologist.

During the period between 1967 and 3.1.1978 the applicant was from time to time acting as the Director of the Department of Geological Survey, during the absence of the then Director, by virtue of appointments made by the Public Service Commission and published in the Official Gazette of the Republic. He was Acting Director of the Department from 23.1.1978 until the appointment of the interested party to the post.

He is a graduate of the Pancyprian Gymnasium. He is the holder of a Diploma in Natural Science (Geography) of the Athens University, a Certificate in Bookkeeping of the Royal Institute of Agriculture, Athens, a post-graduate Diploma D.I.C., (Engineering Geology) of the Imperial College of London University; he is a Doctor in Natural Science and Geography of the Athens University, a Fellow of the Institute of Mining and Metallurgy, London (F.I. M.M.); he also holds a Certificate of attendance of a post-graduate course in Geology, Cairo (UNESCO) (18.2.64 - 26.3.64), a Certificate of attendance of a three month course in Applied Geochemistry of the Imperial College of Science and Technology, and he is a Fellow Lecturer in Mineralogy of the Athens University.

The interested party Georghios Constantinou was appointed as a Geologist on an unestablished basis on 2.1.65, he became a Geologist, 2nd Grade, on probation, on 1.2.1967. He was promoted to Geologist, 1st Grade on 1.2.70 which post he held up to 1.1.80 when he became Director of Geological Survey by virtue of the sub judice decision. He is a graduate of the Pancyprian Gymnasium. He holds a Diploma in Natural Science and Geography of the Athens University, a Diploma of the Imperial College of Science and

Technology (D.I.C.) London, in Mineral Geology (Mineral Exploration), a Ph. D. of the University of London and has followed post-doctoral studies at the University of Brunswick, Canada.

The relevant facts concerning this recourse, are as follows: 5

On the 26.6.79 the Director-General of the Ministry of Agriculture and Natural Resources requested the Chairman of the Public Service Commission for the filling of the post of Director of the Department of Geological Survey as the relevant approval of the Minister of Finance was already given. 10

Four candidates applied for the post, including the applicant and the interested party, who were interviewed on the 28.11.1979. 15

Subsequently, the respondent Commission, having heard the recommendations of the Director-General of the Ministry of Agriculture which had been submitted in writing, in its minutes of the 28.11.1979 stated as follows:

“Bearing in mind the qualifications, the merit, in general, the seniority and the impressions which the candidates created during the interview which preceded, the Director-General of the Ministry of Agriculture and Natural Resources recommended as better for promotion to the vacant post of Director of the Department of Geological Survey Mr. Georghios Constantinou and to a somewhat lesser extent Mr. Andreas Panayiotou (between the two he was slightly inclined towards Mr. Georghios Constantinou).” 20 25

The meeting of the respondent Commission was adjourned to the 15.12.1979 where it decided: 30

“...on the basis of the material before it and the interviews, and having seriously taken into consideration the views and recommendations of the Director-General... proceeded to evaluate and compare the candidates and reached the following conclusions: 35

(1) (a) All the candidates possess the required by the scheme of service qualifications;

5 (b) As regards the administrative ability and experience required by the scheme of service, all the candidates satisfy this qualification, as it transpires from the applications, personal files, confidential reports and generally the material before the Commission.

10 (c) All the candidates possess the remaining qualifications, those required by the scheme of service."

And, in conclusion, it is stated:

15 "In conclusion the Public Service Commission, having examined and compared the merit, qualifications, seniority, experience, career of the candidates on the basis of the applications, the Personal Files and Confidential Reports, their performance at their separate interviews before the Commission as well as the views and recommendations of the Director-General of the Ministry of Agriculture and Natural Resources, which  
20 he expressed both in writing as well as orally, considers that Mr. Georghios Constantinou is on the whole superior to the rest of the candidates, finds him to be the most suitable and decides to promote him to the vacant post of Director of the Department of Geological Survey as from 1st January, 1980".  
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Hence, the present recourse.

The grounds of law upon which the recourse is based may be summarised as follows:

30 1. The sub judice decision is contrary to Law in that the interested party does not possess the qualifications required by the scheme of service, as is provided by the Public Service Law, 1967, Law 33 of 1967, section 44(1) in that he does not have "administrative ability and experience".

35 2. The respondents failed to select the best candidate as regards merit, qualifications and seniority.

3. The respondent Commission in disregarding the applicant's striking superiority and seniority acted in excess and/or abuse of powers and/or exercised its discretionary powers in a defective manner.

4. The respondent Commission acted contrary to sections 30 and 31 of Law 33/67 in that it promoted the interested party to the post of Director of the Department of Geological Survey not from an immediately lower post.

5. The respondent's decision is not reasoned at all and/or not duly reasoned.

As regards the first ground of law, the following facts transpire from what is before this Court:

The applicant is senior to the interested party by holding at the time of the sub judice decision a higher post—that of Senior Geologist since 1.4.74, and by having an altogether longer service in the Public Service having first been appointed in December, 1957. The interested party, on the other hand, was first appointed in the Public Service in July, 1964, and to the post of Geologist 1st Grade which he held immediately prior to the sub judice decision on 1.2.1970.

As regards merit, when looking at the overall picture presented by the applicant and the interested party, it can safely be said that they are more or less of equal merit. In fact this has been conceded by counsel for the Republic.

As regards academic qualifications, they are more or less the same but there is also a requirement for "administrative ability and experience". As already stated above, the applicant is senior to the interested party. Though in the present instance the post in question is a first entry and promotion post, in which case seniority as such is not a decisive factor in determining the suitability of a candidate in the sense that Public officers cannot generally be promoted by more than one grade at once, nevertheless, in the present instance, the seniority of the applicant is a factor that should not have been lightly disregarded, not in terms of seniority as indicating "longer service" but as be-

ing a factor directly connected and referable to the applicant possessing greater experience. As stated on numerous occasions "the notion of experience must reasonably be taken to include that of seniority" (see *Ierides v. Republic* 5 (1980) 3 C.L.R. 165 at p. 179.

In the case of *Theodoros G. Papapetrou v. The Republic*, 2 R.S.C.C. 61, the following is stated at p. 70-71 which was cited with approval in the recent case of *Skapoullis and Another v. The Republic* (1984) 3 C.L.R. 554 at p. 562:

10 "The term 'experience' inevitably contains the notion of knowledge acquired through acting in a certain capacity and cannot be reasonably interpreted as amounting merely to knowledge acquired through observation and study."

15 Obviously, what tipped the scales in favour of the interested party were the recommendations of the Director-General of the Ministry, who not only recommended the interested party as the best candidate, but also presented the applicant before the Public Service Commission and in giving evidence before me, as good for nothing, contrary 20 to his confidential reports. As it appears from the relevant files, the applicant was always reported as excellent and for most of the recent years preceding the decision complained of, he was recommended for promotion and blue 25 reports were made for him by his reporting officer. No reasons are given as to why the confidential reports were disregarded. Furthermore, another factor in favour of the applicant, which appears to have been disregarded was that the applicant was holding at the time the post of Senior 30 Geologist, a higher rank than that of Geologist 1st Grade, which was held by the interested party.

It is clear from the above, that the respondent Commission in taking the decision complained of, did not take properly into consideration the seniority of the applicant 35 and the fact that he was holding at the time the post of a higher rank than that of the interested party and relied only on the recommendations of the Director-General of the Ministry, which were contrary to the confidential reports. Therefore, the decision to promote the interested par-



y was taken by the respondent Commission without carrying out a proper enquiry and without taking into consideration material factors.

Consequently, the sub judice decision complained of is hereby declared null and void.

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The respondent to pay £30.- against the costs of the applicant.

*Sub judice decision annulled.  
Respondent to pay £30.- costs.*