

1986 December 19

[A. LOIZOU, J]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

GEORGHIOS HARIS,

Applicant,

”

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondents.

(Case No. 554/85).

*Public Officers—Secondment/Promotions—Head of Department
—Recommendations of—Special reasons given for not fol-
lowing them—Sub judice decisions, reached after reconsi-
deration of case, following an annulling decision of this
Court, reasonably open to respondent Commission.*

5

The interested party Andreas Iacovides was seconded to the temporary post of Agricultural Officer Second Grade as from 15.6.78. As from 15.3.82 he was seconded to the temporary post of Agricultural Officer First Grade and, finally, he was promoted as from 15.11.82 to the permanent post of Agricultural Officer First Grade.

10

On 16.9.83 the Supreme Court annulled the secondment of the interested party to the temporary post of Agricultural Officer Second Grade*. The decision was affirmed on appeal**. As a result of such annulment the respondent Commission revoked the second of the said secondments and the said promotion and proceeded to re-examine the matter.

15

* Harris v. The Republic (1983) 3 C.L.R. 995
** Republic v Harris (1985) 3 C.L.R. 106

It must be noted that in compliance with the annulling decision of the Supreme Court the Commission in re-examining the matter treated the applicant and the interested party as equal in qualifications and that it ignored those confidential reports on the applicant, which, in accordance with such decision were tainted with bias. 5

The Commission concluded that the interested party is better in merit than the applicant and based such conclusion on comparison of the relevant confidential reports other than those, which were tainted with bias as aforesaid. The Commission further concluded that such superiority in merit of the interested party outweighs applicants seniority of 11 months over the interested party. The Commission gave various reasons why it should not follow the recommendations of the Head of the Department in favour of the applicant.* 10 15

As a result the Commission selected the interested party for secondment to the temporary post of Agricultural Officer Second Grade retrospectively as from 15.6.78. The Commission, then, in accordance with section 44(1)(a) of the Public Service Law and the General Orders of the Council of Ministers seconded the interested party retrospectively as from the date of the revoked secondment, i.e. 15.3.82, to the combined post of Agricultural Officer First Grade and, finally, after examining all relevant material and the confidential reports of the candidates for the filling of the permanent post of Agricultural Officer First Grade promoted the interested party to the post, which became vacant by reason of the said revocation, retrospectively as from 15.11.82, i.e. the date of the revoked promotion, on the ground that the interested party was superior to all other candidates. 20 25 30

Hence the present recourse directed against the aforesaid three decisions.

* It must be noted that one of the reasons for annulling the first decision was the lack of special reasoning for not following such recommendations.

Held, dismissing the recourse: (1) The respondent gave special reasons* why it disregarded the recommendations of the Head of the Department.

5 (2) In the circumstances, the selection of the interested party was reasonably open to the respondent Commission, it is duly reasoned and there is no defect, which would justify annulment.

*Recourse dismissed.
No order as to costs.*

10 Recourse

Recourse against the decision of the respondents to second the interested party to the temporary post of Agricultural Officer 2nd Grade as from 15.6.1978, to the temporary post of Agricultural Officer 1st Grade as from 15.3.1982 and to promote the interested party to the permanent post of Agricultural Officer 1st Grade as from 15.11.1982 in preference and instead of the applicant.

4. *Haviaras*, for the applicant.

20 *R. Gavrielides*, Senior Counsel of the Republic, for the respondents.

Cum adv vult

25 A. Loizou J. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that "the secondment of the interested party Andreas M. Iacovides to the temporary post of Agricultural Officer Second Grade as from 15th June, 1978, his secondment to the temporary post of Agricultural Officer First Grade as from 15th March, 1982, and his promotion to the permanent post of Agricultural Officer First Grade as from 30 15th November 1982, instead of the applicant is contrary to law null and void and with no legal effect."

The Supreme Court by its judgment of the 16th September

* Such reasons appear in the relevant minutes of the Commission which are quoted at pp 2502-2503 post

ber 1983, in recourse No. 74/82, reported as *Georghios Haris v. The Republic* (1983) 3 C.L.R. 995, annulled the decision of the respondent Commission, by which Andreas Iacovides, interested party in that recourse also, was seconded as from 15th June, 1978, to the Temporary (Development Budget) post of Agricultural Officer Second Grade in the department of Agriculture. 5

The respondent Commission at its meeting of the 23rd September 1983, in discharging its obligations to reinstate things to the situation that existed before its aforesaid annulled decision informed about it the said interested party. Moreover, acting in accordance with an advice of the legal services of the Republic given in a similar case decided that the annulment of the aforesaid secondment affected his subsequent secondment to the temporary post of Agricultural Officer First Grade as from 15th March, 1982, as well as his promotion to the permanent post of Agricultural Officer First Grade as from 15th November, 1982, and decided to revoke its respective decisions. Consequently the interested party reverted to the post he held before the judgment, that is the post of Assistant Agricultural Officer, which was renamed on 1st January 1981 to Agricultural Officer and informed the interested party accordingly. 10 15 20

In the meantime the Attorney-General of the Republic filed an appeal against the aforesaid first instance judgment of this Court which the Full Bench dismissed, however, on the 24th January 1985. This judgment is reported as the *Republic v. Georghios Haris* (1985) 3 C.L.R. p. 106. 25 30

In response to a request of the respondent Commission, the office of the Attorney-General advised the respondent Commission by letter dated 25th February 1985, Appendix 2, that they should re-examine the matter on the basis of the facts which existed at the time of the annulled decision. Moreover it advised that at the re-examination in compliance to the annulling decision of the Supreme Court, the respondent Commission should: 35

“(a) consider that from the point of view of qualifica-

tions the applicant and the interested party were equal (pp. 8 and 9 of the judgment);

- 5 (b) ignore the confidential reports of the applicant for which the Court decided that they were the product of bias against him;
- 10 (c) consider that the plain statement of the Head of the Department that the applicant 'on the totality of the criteria is better' than the interested party constitutes a reasoned recommendation (p. 12 of the judgment), a fact which, however, does not prevent the Commission to invite the Head of the Department to give further and better particulars on his view as to which of the two officers is better since in the same judgment (p. 15 5) the Court clearly explains what constitute: 'recommendations' in accordance with Section 44(3) of Law No. 33 of 1967."

20 For the sake of convenience I shall quote herein the relevant passages referred to in the aforesaid advice as reported in the Cyprus Law Reports giving the corresponding pages thereof.

Republic v. Haris (1985) 3 C.L.R. p. 106:

(a) Page 115:

25 "In *Myrianthi Hji Ioannou v. The Republic*, (1983 3 C.L.R. 1041, a Full Bench case, in delivering the unanimous judgment of the Court, I said:-

30 'Possession of academic qualifications additional to those required by the scheme of service, which are not specified in the scheme of service, as an advantage, should not weigh greatly in the mind of the Commission who should decide in selecting the best candidate on the totality of the circumstance before them.'

35 In this case, however, having regard to the qualifications of the respondent and the interested party, we are of the view that their qualifications are equal an

the interested party was not superior.”

(b) Pages 117-118.

“Triantafyllides, P., in *Christou v. The Republic* (1980) 3 C.L.R. 437, at p. 449, observed:-

‘The lack of impartiality by public officer A against public officer B must be established, with sufficient certainty, either by facts emerging from relevant administrative records or by safe inferences to be drawn from the existence of such facts.’

From the administrative files before us we safely infer, as the trial Judge did, that the reports of A-grotis for the years to which the Commission directed its mind on 21.10.81 and on which they based the sub judice decision are tainted with bias.

The trial Judge said the following about these reports:-

‘As regards the confidential reports of the applicant for the years 1975 and 1976, I shall confine myself in saying this much: they have created an unsatisfactory state of affairs rendering their value next to nil: no administrative organ can depict therefrom with the required certainty the real picture of the merit of the candidate concerned.

As against this confused and unsatisfactory material presented by the aforesaid confidential reports the P.S.C. had before it the clear recommendations of the Director; in the circumstances it was not open to it to disregard them as they had no other solid soil to step on; in view of the above I cannot subscribe, with respect to their reasoning.’

We share the view of the trial Judge. The reports for the years to which we have referred are nullified for the reasons we have endeavoured to explain and which emerge clearly from the file.”

Whilst here, useful reference may be made to what the

respondent Commission stated in its minutes Appendix 3, about this point:

5 "At the comparison of the merit of the two candidates the Commission did not take into consideration the confidential reports on Haris for the years 1974, 1975, 1976, which in accordance with the decision of the Supreme Court were the product of bias.

10 The Public Service Commission on the basis of the totality of the confidential reports of the candidates (without naturally taking into consideration the aforesaid reports on Haris), considered that Iacovides presents evident superiority as against Haris."

Then it goes on to give a detailed analysis of their comparison as evidenced by the confidential reports

15 (c) Page 117.

20 "In the present case the Commission had the opportunity of hearing the reasoned recommendations of the Head of the Department. They disregarded them without due reasoning and the trial Judge rightly annulled the decision for the promotion/secondment in respect of interested party Iacovides."

Page 112.

25 " 'Recommendations' in the context of this section has to be given its popular meaning rather than taken as being used in any narrow legal or technical sense. It carries with it the duty on the Head of the Department to give a description of the merits of the candidates and by comparing their respective merits and demerits to suggest who is more qualified for the post.

30 He has to make an assessment of the suitability of every candidate on a consideration of all factors relevant to his merits, qualifications and seniority, and then make a comparison of the candidates by reference thereto—(*Evangelou v. The Republic*, (supra); *Georghios Gavriel v. The Republic*, (1971) 3 C.L.R. 186, at p. 199; *Mvtides & Another v. The Republic*, (supra)).

35

The recommendations of a Director, when he gives reasons for such recommendations, are subject to judicial review by this Court. The Commission, certainly, is not a rubber-stamp of the recommendations of the Director but it should not lightly disregard them as if they decide not to act in accordance with such recommendations, they have to give specific reasons for so disregarding them and such reasons are subject to scrutiny by the administrative Court—(See, inter alia, *Protopapas v. The Republic*, (1981) 3 C.L.R. 456).”

The respondent Commission at its meeting of the 12th March, 1985, (Appendix 5) in the light of the judgment of the Supreme Court—the relevant passages from which have already been quoted above—and the aforementioned legal advice, proceeded to re-examine the matter. For that purpose it summoned before it Mr. Avraam Louca, Director of the Department of Agriculture as from 1st August 1976, and the Acting Director-General of the Ministry of Agriculture and Natural Resources, as from 1st February, 1985.

The Commission having heard the views of Mr. Louca, examined all the substantial elements as at the material time and on the basis of the established criteria in their totality (merit, qualifications, seniority) considered that the interested party Andreas Iacovides was superior at the material time to all other candidates and decided to second him as the most suitable to the Temporary (Development Budget) post of Agricultural Officer Second Grade retrospectively from 15th June 1978, that is the same date as from which his secondment which was annulled by the Supreme Court, had been made.

After this decision the respondent Commission re-examined all the questions of his subsequent promotion by secondment to the combined post of First Grade and decided by virtue of the proviso to section 44(1)(a) of the Public Service Laws and in accordance with the General Orders of the Council of Ministers, to promote him by means of a secondment to the temporary post of Agriculture Officer. First Grade retrospectively from the 15th

March, 1982, that is the same date as from which his promotion on secondment had been made and which was later revoked by the respondent Commission by its decision of the 23rd September 1983.

- 5 Subsequent to the above the question arose of the re-examination and the filling of a permanent post of Agricultural Officer, First Grade which had been filled together with six other posts at the meeting of the respondent Commission of the 4th November, 1982, which had become vacant as a result of the decision of the respondent Commission, dated 23rd September 1983, by virtue of which the promotion of the interested party to that post had been revoked. The respondent Commission examined all relevant material from the File for the Filling of the post as well as the personal files and the confidential reports of the candidates and also took into consideration the conclusions of the departmental Board and the views and recommendations that the Director of the Department of Agriculture had then expressed.
- 10
- 15
- 20 The Commission having taken into consideration all the material elements before it considered on the basis of the established criteria in their totality (merit, qualification, seniority) that the interested party was superior to all other candidates and decided to promote him as the most suitable to the permanent (Development Budget) post of Agricultural Officers First Grade, in the department of Agriculture retrospectively as from 15th November 1982, that is on the same date from which he had been promoted and which had been revoked by the aforementioned decision of the respondent Commission.
- 25
- 30

The aforementioned is taken from the relevant minutes of the respondent Commission of the 12th March, 1985. Appendix 3.

- 35 It has already been seen that the Full Bench of this Court concluded that both the applicant and the interested party had the additional qualification and none was superior to the other in qualifications. In fact the respondent Commission in examining the matter did stress this fact in its minutes.

Also the respondent Commission in compliance with the judgment of the Court ignored completely the confidential reports which were found by it, to be tainted with bias. In its relevant minutes at p. 10 of Appendix 3, as clearly seen from the relevant passage quoted earlier, it explicitly states that it did not take into consideration the confidential reports on Haris for the years 1974, 1975, 1976. 5

As regards the comparison then made on the basis of the rest of the confidential reports the minute reads as follows: 10

"The Public Service Commission on the basis of the totality of the confidential reports of the candidates (without naturally taking into consideration the aforesaid reports on Haris), considered that Iacovides presents evident superiority as against Haris. More concretely since 1969 when these two officers were promoted to the post of Agricultural Officer, it is observed that with the exception of the first year when Haris was superior slightly, with a grading of 4-4-2 as against 2-5-3 of Iacovides, the remaining years Iacovides was continuously superior. In 1970 he had slight superiority 2-8-2, as against 1-7-2. During the next three years, 1971, 1972, 1973, the superiority of Iacovides as against Haris was evident. For the years 1974, 1975, 1976, the confidential reports for Haris are not taken into consideration and so no comparison is made. For 1977, the two candidates had about the same confidential reports with Iacovides, however, slightly superior. More concretely his grading was 4-6-0, whereas that of Haris was 3-7-0. The Commission has now before it and the reports for 1978 which are of equal merit with slight superiority of Haris. More concretely in them Haris has a grading of 7-3-0 as against 6-4-0 of Iacovides. Since, however, the material time was May 1978, and they cover the whole year they are taken only indicatively into consideration. 15 20 25 30 35

The Commission further noted that Mr. Louca himself contributed to the preparation of the last confidential reports both for Haris and Iacovides, 40

5 The Commission has of course before it the statement of Mr. Louca that Haris was a better officer than Iacovides. This view, however, of Mr. Louca was based, as it appears from what he himself said on the period as from 1st August 1976 when he assumed duties for the first time at the Department of Agriculture when he was appointed Director, until the material time. Before that he was serving in another section. It must on the other hand be noted that 10 Mr. Louca himself, adopted as a countersigning officer the assessment of the reporting officer for Iacovides for the year 1976, which was in all respects valid, in accordance with which Iacovides was 'excellent' on nine out of ten items and 'very good' on the other. 15 Of course it is not permissible to take into consideration in accordance with the judgment of the Supreme Court the report on Haris for the same year and indeed it is not taken at all into consideration by the Commission. Also on the following year, 1977, Mr. 20 Louca, as a countersigning officer adopted the assessment of the reporting officer (different from that of the previous years) in accordance with which Iacovides was 'excellent' on four items of the grading and 'very good' on six items.

25 That same year 1977, Mr. Louca acting as reporting and countersigning officer graded Haris as 'excellent' on three items and 'very good' on seven. Although the Commission in accordance with the judgment of the Court does not take into consideration the confidential 30 reports on Haris for the years 1974, 1975, 1976 and so no comparison whatsoever is possible for this period, yet it does not omit to note that Iacovides had during those years also, high confidential reports, a fact which confirms that he had steady high performance in his service." 35

The aforesaid passage speaks for itself and there is very little to be added by me, except to highlight the statement contained therein that the reference to the reports for the interested party Iacovides for the years 1974 to 1976 was 40 made as indicating his steady high performance. Furthermore in this extract one can find the cogent reasoning that

it had to give for disregarding the recommendation of the Head of the Department in addition of course to what is stated in other parts of its minutes. In a way satisfying the principles laid down by a line of authorities.

As regards the seniority of the applicant and the interested party, the respondent Commission notes that Haris is senior by eleven months, his seniority, however, emanating from the fact that he entered first in the service from the interested party and goes on to say that "on the other hand material is the fact that these two officers had parallel evolution in their service; they were appointed together from month to month in the permanent post of Assistant Agricultural Officer as from 1st October 1966 and later to the permanent post as from 1st June 1969.

On the basis of the above, the Commission considered that the seniority of Haris vis a vis Iacovides is not such as possibly to reverse the general picture of evaluation of the candidates as it emerges from their confidential reports."

In this passage there is the reasoning of the respondent Commission for ignoring the applicant's seniority, relying in coming to that conclusion on the overall picture of the candidates regarding their merits as same emerges from the confidential reports.

It is clear from the aforesaid that the sub judice decision was reasonably open to the respondent Commission and that it could on the material before it reach the conclusion it did. It is a duly reasoned decision and there is no defect which would have been a ground for its annulment.

For all the above reasons the recourse is dismissed but in the circumstances there will be no order as to costs.

*Recourse dismissed.
No order as to costs.*