

1986 December 1

[A. LOIZOU, DEMETRIADES, LORIS, STYLIANIDES, KOURRIS, JJ.]

CHRYSSO A. EFREM AND OTHERS,

Appellants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondents.

(Revisional Jurisdiction Appeal No. 395).

Public Officers — Promotions — Judicial control — Principles applicable—Review of.

5 This is an appeal from the judgment of a Judge of this Court, whereby the appellants' recourse, challenging the promotions and secondments of the interested parties to the post of Assistant Labour Officer, was dismissed.

10 *Held, dismissing the appeal:* (1) It has been repeatedly held by this Court that: (a) It cannot interfere with promotions, unless it is established that the persons not selected had striking superiority over those selected, the burden of proof being on applicant's shoulder, (b) The discretion of the Commission will not be interfered with provided that it has been properly exercised by the Commission, and (c) The Commission has to be allowed in
15 such cases the appropriate wide margin of discretion.

(2) In the light of the aforesaid principles and the material before the Commission the conclusions of the trial Judge that the sub judice decision was reasonably open to the respondent Commission and that, therefore, the
20 Commission did not exceed the outer limits of its power, cannot be faulted on any ground.

Appeal dismissed.

No order as to costs.

Cases referred to:

- Michanicos v. The Republic* (1976) 3 C.L.R. 237;
- Michaelides v. The Republic* (1976) 3 C.L.R. 115;
- Christou v. The Republic* (1977) 3 C.L.R. 11;
- Duncan v. The Republic* (1977) 3 C.L.R. 153; 5
- Georgioui v. The Republic* (1976) 3 C.L.R. 74.

Appeal.

Appeal against the judgment of the President of the Supreme Court of Cyprus (Triantafyllides, P.) given on the 5th May, 1984 (Revisional Jurisdiction Case No. 207/79)* whereby appellants' recourse against the promotion of the interested parties to the post of Assistant Labour Officer was dismissed. 10

M. Christofides, for the appellants.

A. Vassiliades, for the respondents. 15

Cur. adv. vult.

A. LOIZOU J. read the following judgment of the Court. The appellants in this appeal challenged, by means of a recourse a decision of the respondent Public Service Commission regarding promotions and secondments to the post of Assistant Labour Officer. 20

The learned trial Judge dismissed the recourse as he was not satisfied that there has been actually established striking superiority of any one of the applicants over any one of the interested parties concerned so as to justify him in reaching the conclusion that it was not reasonably open to the respondent Commission "in the proper exercise of its discretionary power to select for promotion or secondment the interested parties and that, consequently, by doing so the Commission has exceeded the proper limits of its said powers". The learned trial Judge added, also, that "it is not the task of this Court to substitute its own discretion in the place of that of the Commission as regards 25 30

* Reported in (1985) 3 C.L.R. 917

the candidates who ought to have been selected as the most suitable for promotion”.

As against the dismissal of their recourse the appellants took the present appeal on a number of grounds challenging the above conclusion of the learned trial Judge.

Appointments and promotions by the respondent Commission involve the exercise of discretion by the latter. Therefore the validity of the decision of the respondent rests to be decided on the principles governing judicial control of such decisions.

It has been repeatedly held by this Court that “it cannot interfere unless it has been established that the persons not selected did have striking superiority over those selected”; and that the onus, in such a case, to prove striking superiority always lies on the applicants’ side. *Michanicos v. Republic* (1976) 3 C.L.R. 237; *Michaelides v. Republic* (1976) 3 C.L.R. 115; *Christou v. Republic* (1977) 3 C.L.R. 11; *Duncan v. Republic* (1977) 3 C.L.R. 153. It has also, been held that the discretion of the Public Service Commission will not be interfered with by the Court even if it might have not chosen the same officer as the Commission provided that this discretion has been properly exercised by the Commission. And it has finally been held that the respondent Commission has to be allowed in such cases the appropriate wide margin of discretion.

Very enlightening in this respect is the case of *Georghiou v. Republic* (1976) 3 C.L.R. 74 at p. 83 where Triantafyllides P., said:

“As it appears from the case-law in Greece, which is set out in ‘Επιθεώρησης Δημοσίου Δικαίου και Διοικητικού Δικαίου’ (Review of Public and Administrative Law) 1965, vol. 9, p. 369, when an organ, such as the Public Service Commission, selects a candidate on the basis of comparison with others, it is not necessary to show, in order to justify his selection, that he was strikingly superior to the others. On the other hand, an administrative Court cannot intervene in order to set aside the decision regarding such selection unless it is satisfied, by an applicant in a recourse be-

fore it, that he was an eligible candidate who was strikingly superior to the one who was selected, because only in such a case the organ which has made the selection for the purpose of an appointment or promotion is deemed to have exceeded the outer limits of its discretion and, therefore, to have acted in excess or abuse of its powers; also, in such a situation the complained of decision of the organ concerned is to be regarded as either lacking due reasoning or as based on unlawful or erroneous or otherwise invalid reasoning. 5 10

Useful reference, in this respect, may be made to the Conclusions from the Case-Law of the Council of State in Greece, 1929 - 1959, p. 268, and to the decisions of such Council in cases 601/1956, 778/1956 and 277/1964. 15

This Court has followed the same approach in a number of cases, such as the *Evangelou case*, supra (at p. 300); and, of course, the onus of establishing his striking superiority lies always on the applicant in a recourse (see *Georghiades and Another v. The Republic* (1970) 3 C.L.R. 257, 269).” 20

Having anxiously considered the material which was before the respondent Commission in the light of all the aforesaid principles we are unanimously of the opinion that the above conclusion of the learned trial Judge, to the effect that the sub judice decision was reasonably open to the respondent Commission in the proper exercise of its discretionary powers, to select for promotion or secondment the interested parties and, that consequently, by doing so the Commission has not exceeded the outer limits of its powers, cannot be faulted on any ground, and, therefore, the appeal is bound to fail. 25 30

In the result the appeal is dismissed with no order as to costs. 35

Appeal dismissed with no order as to costs.