

1986 November 20

[TRIANTAFYLLIDES, P., SAVVIDES, LORIS, STYLIANIDES,
KOURRIS, JJ.]

NIKI STYLIANOY.

Appellant (Applicant).

v

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION.

Respondent

*(Revisional Jurisdiction
Appeal No. 580)*

Public Officers—Promotions—Seniority of ten, five and four
years—Merit (on the basis of the last two confidential
reports) and qualifications more or less equal—Seniority
disregarded by reason of the recommendations of the
5 representative of the Head of the Department—Such
recommendations not justified by the material in the file—
Adequate reasons ought to have been given for overlooking
such seniority—Sub judice decision not reasonably open
to respondent Commission

10 This is an appeal from the first instance judgment of a
Judge of this Court, whereby the appellant's recourse
against the promotions of eleven officers to the post of
Labour Officer, 1st Grade was dismissed. In the course
of this appeal the appellant discontinued the proceedings
15 as against seven of the eleven interested parties.

The appellant was equal in qualifications with the
remaining four interested parties. On the basis of the last
two confidential reports she was, also, equal in merit if
not superior, to the said interested parties. Moreover the
20 appellant was senior by ten years to two of the interested
parties, five years to interested party Argyrou and four
years to interested party Economou. The reason given by

the respondent Commission for not preferring the appellant to anyone of the interested party was that the appellant had not been recommended for promotion, whilst the interested parties had been so recommended by the representative of the Head of the Department. 5

Held, allowing the appeal: (1) The recommendations were not justified by the material in the record before the Commission.

(2) The Commission ought to have given adequate reasons for overlooking the by far greater seniority of the appellant. 10

(3) In the circumstances the sub judice decision was not reasonably open to the Commission. To hold otherwise would amount to laying down that the representative of the Head of the Department was empowered to select those to be appointed by the Commission. 15

Appeal allowed.

No order as to costs.

Cases referred to:

Partellides v. The Republic (1969) 3 C.L.R. 480. 20

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Malachtos, J.) given on the 22nd March, 1986 (Revisional Jurisdiction Case No. 260/83)* whereby appellant's recourse against the promotion of the interested parties to the post of Labour Officer 1st Grade in the Ministry of Labour and Social Insurance was dismissed. 25

A. S. Angelides, for the appellants.

G. Erotocritou, (Mrs.), Senior Counsel of the Republic, for the respondent. 30

Cur. adv. vult.

* Reported in (1986) 3 C.L.R. 579

5 TRIANTAFYLIDIS P read the following judgment of the Court. This is an appeal against the first instance judgment of a Judge of this Court by means of which there was dismissed the recourse of the appellant against eleven promotions to the post of Labour Officer, 1st Grade, to which the appellant, though she was a candidate for promotion, was not promoted. The sub judge promotions were effected by the respondent Commission on the 28th February 1983, as from the 1st March 1983.

10 In the course of this appeal the appellant discontinued the present proceedings in so far as seven of those promoted are concerned; and it should be observed that counsel for the appellant quite rightly advised the appellant to adopt such a course.

15 As regards the remaining four appointees, A. Argyrou, M. Gregoriou, A. Mitsides and S. Economou (to be referred to hereinafter as the "interested parties") counsel for the appellant and for the respondent seem to be in agreement that the qualifications of the interested parties were
20 more or less the same as of those of the appellant.

On the basis of the confidential reports for the years 1981 and 1982 the appellant appears to be at least equal in merit, to the interested parties, if not superior to all of them. The appellant was, also, by ten years senior to interested parties Mitsides and Gregoriou, four years senior
25 to interested party Economou and five years senior to interested party Argyrou.

The reason which was given by the respondent Commission for not preferring for promotion the appellant to
30 these four interested parties was that the Commission did not find any reason justifying the selection for promotion of the appellant instead of the interested parties who had been recommended for promotion by Mr. A. Protopapas, who attended the meetings of the Commission as representative of the Director-General of the Ministry of La-
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bour and Social Insurance; and the appellant had not been recommended by him for promotion.

The Commission had before it all the relevant material, including the confidential reports for, and the personal files of, the candidates, as well as details of the careers in the public service of the candidates, and it should have concluded that the recommendations of Mr. Protopapas to promote the interested parties instead of the appellant were not justified by the material on record before the Commission, since their qualifications were the same as those of the appellant, who was, to say the least, more or less equal in merit to the interested parties and who, also, was strikingly senior to all four of them. 5 10

Actually, the Commission ought to have considered whether, notwithstanding the recommendations of Mr. Protopapas, it was justified, in circumstances such as those of the present case, where qualifications and merits were more or less equal, to decide to overlook the by far greater seniority of the appellant and the Commission ought to have given adequate reasons for having done so (see, inter alia, *Partellides v. The Republic*, (1969) 3 C.L.R. 480). 15 20

We have no difficulty in concluding, in the light also of the very fair approach to this case by counsel for the respondent, which we do appreciate, that this is a case in which on the totality of the material before the Commission there was no other way open to it but to prefer for promotion the appellant to any one of the four interested parties, notwithstanding the recommendations in their favour of Mr. Protopapas. 25

Had we found, in the circumstances of this case, that it was reasonably open, in a case of this nature, to the Commission to prefer the interested parties instead of the appellant, merely on the strength of the recommendations of Mr. Protopapas, this would have amounted to laying down that Mr. Protopapas was empowered to select for promotion those to be appointed by the respondent Commission. 30 35

We, consequently, have to annul the promotions of the four interested parties, namely A. Argyrou, M. Gregoriou, A. Mitsides and S. Economou.

5 This appeal is, therefore, allowed; but with no order as to its costs.

Appeal allowed. No order as to costs.