1986 January 31

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

GREGORIOS K. CHRISTODOULIDES.

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondents.

(Case No. 28/84).

Public Officers—First Entry and Promotion post—Appointment—Seniority—The Public Service Law 33/67, s. 46(1) as amended by s. 5(a) of Law 10/83—Effect of said section.

Administrative Law—Material Misconception—Public Officers—First Entry and Promotion post—Appointment—As seniority is one of the statutory factors in the selection process (s. 44(2) of the Public Service Law 33/67) any mistake regarding same is material and as such apt to invalidate the decision.

By means of the present recourse the applicant challenges the appointment of the interested parties to the post of Registrar, Department of Medical and Public Health Services, a first entry and promotion post, on the following grounds, namely (1) the ineligibility of interested party Symeonides for lack of one of the qualifications under the relevant scheme of service, i.e. the three-year experience in the government medical establishment, (b) Misconception of Law as to the seniority of applicant and interested party Ioannides, (c) striking superiority of applicant over the interested parties, and (d) defective inquiry

designed to elicitate the worth of applicant and interested party Ioannides.

Counsel for applicant interpreted the scheme of service to the effect that the said three-year experience requirement is only satisfied if (a) duties are performed in the field of surgery and (b) after the acquisition of specialisation in surgery, a prerequisite the interested party Symeonides failed to satisfy as he acquired the title of specialist in December 1981.

As regards the issue of seniority it should be noted that interested party Ioannides was appointed Medical Officer A (permanent post) on 16.1.79, whilst the applicant was appointed to the same post on 2.7.79. Prior to that date applicant served as a medical officer on a contractual basis, beginning from 20.2.78 for six months, renewed thereafter by identical agreements of similar duration.

The Public Service Commission acted on the assumption that the interested party Ioannides was senior to the applicant.

Held, dismissing the recourse: (1) The construction of the scheme of service suggested by counsel for the applicant is not only unwarranted by its wording, but it is incompatible with its express provisions.

(2) As seniority is one of three factors for promotion (s. 44(2)) of Law 33/67) any mistake in this field has to be treated as material leading to the annulment of the sub judice promotion. At the centre of the controversy in this case is the interpretation of s. 46(1) of Law 33/67 as amended by s. 5(c) of Law 10/83. This section does not assimilate, for purposes of seniority, holders of permanent and temporary posts in the public service. Its effect is confined to equation for purposes of seniority of service in a particular post, permanent or temporary, irrespective of the manner of appointment thereto. The determining factor of seniority is the date of appointment to a particular post. Prior service is only relevant to seniority, if the date of appointment to a particular post is the same

(s. 46(2) of Law 33/67). The interested party was appointed to the post of Medical Officer A six months before applicant's appointment thereto. Before the applicant's appointment, i.e. before 2.7.79, the applicant did not hold the same post as the interested party.

It follows that the interested party was senior to the applicant.

(3) Examination of the reports on the three candidates, their qualifications and length of service, fails to disclose anything in the nature of a dramatic superiority on the part of the applicant to justify a finding of striking superiority.

(4) It was a perfectly legitimate course for the Commission to seek information relevant to the merits of the applicant and the interested party from their superiors; more so, as the Commission had no uptodate report on the recent performance of Ioannides.

Recourse dismissed.
No order as to costs.

Cases referred to:

Hadjisavvas v. *The Republic* (1982) 3 C.L.R. 76;

Hadjiioannou v. *The Republic* (1983) 3 C.L.R. 1041;

Mettas v. *The Republic* (1985) 3 C.L.R. 250;

Tryfonos v. *The Republic* (1985) 3 C.L.R. 2555.

Recourse.

Recourse against the decision of the respondent to appoint the interested parties to the post of Registrar, Department of Medical and Public Health Services in preference and instead of the applicant.

E. Efstathiou, for the applicant.

A. Vladimirou, for the respondent.

A. S. Angelides, for interested party P. Symeonides.

A. Liatsos for *K. Michaelides*, for interested party Y. Ioannides.

Cur. adv. vult.

PIKIS J. read the following judgment. At issue is the validity of the decision of the respondents appointing interested parties P. Symeonides and Y. Ioannides, Registrars, Department of Medical and Public Health Services, a first entry and promotion post, gazetted on 18.11.83. No benefit would be derived from recounting preliminary steps leading to the above appointments. Suffice is to say applicant and interested parties were among the candidates recommended by the departmental committee as eligible and suitable for promotion.

The decision is challenged on four grounds. They are:-

(a) Ineligibility of P. Symeonides for lack of one of the qualifications required by the scheme of service, the three-year experience in the government medical establishment stipulated therein.

(b) Misconception of the law relevant to the seniority of applicant and Y. Ioannides.

(c) Striking superiority of the applicant over the interested parties, and

(d) defective inquiry stemming from ill-conceived steps designed to elicidate the worth of applicant and Y. Ioannides.

It is expedient to resolve the last two questions in view of the absence of any palpable facts lending support to their validity.

Examination of the reports on the three candidates, their qualifications and length of service, fails to disclose anything in the nature of a dramatic superiority on the part of

the applicant to justify a finding of striking superiority.[1] As much for the contention of striking superiority. The fourth complaint, listed above, is equally unfounded. Before making comparison between applicant and interested party Ioannides (after the revocation of the decision to appoint Mr. Eliades, presumably taken by mistake), they sought information from their superiors in order to complete the picture relevant to their merits. It was a perfectly legitimate course in the context of their inquiries to elicit the facts relevant in this area; more so, as they had no uptodate report on the recent performance of Y. Ioannides. The challenge to the eligibility of P. Symeonides can also be disposed of without undue difficulty. The suggestion is that the requirement in the scheme for three years service as medical officer is only satisfied if -

(a) duties are performed in the field of surgery, and

(b) after the acquisition of specialisation in surgery.

If the latter qualification under (b) is, as a matter of fair construction of the relevant provisions of the scheme, a prerequisite for promotion the interested party failed to satisfy it because he acquired the title of a specialist in December, 1981;[2] service thereafter, was for a period less than three years.

Having carefully examined the scheme, I believe the construction of its provisions suggested by counsel for the applicants, is not only unwarranted by its wording but it is incompatible with its express provisions. All that the scheme of service required by way of experience was that the seven years service should comprise three years service as Medical Officer A' or B' in the field of his specialisation—surgery in this case. Interested party Symeonides performed the duties of a medical officer, as a surgeon, from 1975, when he was contractually employed and continued serving as a surgeon after his appointment as Medical Officer A' in 1978. In view of this interpretation of the scheme of service, objections to his eligibility must be dismissed. The fourth question we must answer, listed

---

[1] Hadjisavvas v. The Republic (1982) 3 C.L.R. 76, 78; and Hadjioannou v. The Republic (1983) 3 C.L.R. 1041.

[2] Mettas v. Republic (1985) 3 C.L.R. 250.

under (a) above, is far more serious and on that perplexed me for a time.

At the centre of the controversy of the parties is the interpretation of s. 46(1) of the Public Service Law—33/67 (as amended by s. 5(a) of Law 10/83). To appreciate the true dimension of the problem we must recount the facts relevant to the employment of the parties in the government service. Interested party Y. Ioannides was appointed government Medical Officer A' (permanent post) on 16.1.79. Applicant was appointed to the same position some six nonths later on 2.7.79. Prior to the date of his permanent ıppointment, applicant served as medical officer in the government medical establishment on a contractual basis. Beginning from 20.2.78 his services were contractually engaged for a period of six months, renewed thereafter by identical agreements of similar duration, the last one of which was in force at the time of his permanent appointment.

In making their selection the respondents advised themselves, as clearly stated in their minute, that interested party was senior to the applicant. Considering the importance of seniority in the selection process, one of the three statutory criteria for promotion (s. 44(2)—Law 33/67), any mistake on the part of the respondents in this area would invariably have to be treated as material and as such apt to invalidate the decision. For the applicant it was contended that by virtue of s. 46(1), applicant qualified as ,enior to Y. Ioannides for his service in the post of melical officer should be deemed as commencing on 20.2.78 ınd not on 2.7.79, as accepted by the respondents. Coun- ,el for the applicant argued s. 46(1), in its amended form, ıssimilated temporary and permanent service for all "se- ıiority" purposes. Counsel for the respondents disputed his interpretation of s. 46(1) and suggested its application ; confined to permanent and temporary appointments made y the Public Service Commission. Counsel for interested arty Ioannides, too, submitted s. 46(1), in its amended ›rm, cannot bear the interpretation attributed to it by ounsel for the applicant.

Although s. 46(1) (as amended by s. 5(a)—Law 10/83)

is not a clearly worded enactment, it does not admit the interpretation favoured by counsel for the applicant. To begin, it does not assimilate, for purposes of seniority, holders of permanent and temporary posts in the public service. Its effect is confined to equation for purposes of seniority of service in a particular post, permanent or temporary, as the case may be, irrespective of the manner of appointment thereto, that is, whether by appointment, secondment or appointment of limited duration. That the above is the correct interpretation of s. 46(1), is reinforced by the provisions of s. 46(2) (as amended by s. 5(b) of Law 10/83). The determining factor for seniority is the date of appointment to a particular position, "appointment" bearing the meaning accorded to the expression. in the context of the Public Service Law, by s. 28. Prior service in any capacity is only relevant for purposes of seniority, as expressly provided in sub-section 2 of s. 46, if the date of appointment to a particular position is the same. In this case, interested party was appointed to the permanent position of Medical Officer A' six months prior to the applicant. Before 2.7.79 applicant did not hold the same position as the interested party. His status was that of a temporary employee, assigning duties of a medical officer whose services were contractually engaged by the Department of Health for the purpose of meeting urgent or extraordinary needs of the service. It is not necessary for the purposes of this judgment to give a definitive answer to the submission that s. 40 does not confer competence on Departments of the State to appoint personnel under the Public Service Law. I doubt whether they have this authority and voice once more the reservations expressed about the soundness of this proposition in the case of *Tryfonos*[1].

For the above reasons, the respondents laboured under no misapprehension as to the seniority of the parties and directed themselves correctly on this as in other aspects of the case.

The recourse fails. It is dismissed. Let there be no order as to costs.

Recourse dismissed.
No order as to costs.

[1] Tryfonos v. The Republic (1985) 3 C.L.R. 2555