

1986 April 23

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

LEONIDAS PAPADOPOULOS,

Applicant.

v.

THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 191/76).

Public Officers—Appointments/Promotions—Public Service Commission not bound to fill a vacancy, even if there exists qualified candidate.

5 The respondent Commission, at its meeting of 14.7.76, decided to call for an interview two of the candidates for two vacant posts of Accountant Class I and II in the Office of the Accountant-General. The applicant was one of the candidates called as aforesaid.

10 At its meeting of 4.5.76 the Commission decided that none of the said two candidates interviewed was suitable for appointment. As a result the present recourse was filed.

15 Counsel for the applicant submitted: (a) That the Commission was bound to promote him since he was eligible for promotion and was not reported upon, according to s. 44(1) (c) of Law 33/67 in the last two annual confidential reports as unsuitable for promotion, (b) That it was not reasonably open to the Commission to reach the conclusion that the applicant was not suitable for promotion.

20 *Held*, dismissing the recourse: (1) The Commission is not bound to fill a vacancy merely because it has been requested or authorised to do so or because it has advertised the existence of such a vacancy or because there exists a

qualified candidate. (*Papapetrou v. The Republic*, 2 R.S.C.C. 115 and *Andreou v. The Republic* (1973) 3 C.L.R. 101) followed).

(2) It is abundantly clear that the Public Service Commission in taking the decision complained of it took into account all the relevant factors, including the personal files and the confidential reports of the applicant, his performance at the interview and the recommendations made by the Head of the Department. It follows that it cannot be said that the respondent Commission exercised its discretion in taking the decision complained of, contrary to law or that the said decision is not duly reasoned.

Recourse dismissed.

No order as to costs.

Cases referred to:

Papapetrou v. The Republic, 2 R.S.C.C. 115;

Andreou v. The Republic (1973) 3 C.L.R. 101.

Recourse.

Recourse against the dismissal of applicant's application for promotion to the post of Accountant in the Office of the Accountant-General.

P. Ioannides, for the applicant.

R. Gavrielides, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

MALACHTOS J. read the following judgment. The applicant in this recourse claims a declaration of the Court that the act and/or decision of the respondents, contained in their letter dated 27.5.76, by which his application for promotion to the post of Accountant in the Office of the Accountant-General was dismissed, is null and void and of no legal effect whatsoever.

The facts of the case, shortly put, are the following:

By letter dated 29.1.76, the Director-General of the Mi-

5 nistry of Finance, informed the Chairman of the Public
Service Commission that the Minister of Finance approved,
among other things, the filling of two posts of Accountant
Class I and II in the office of the Accountant-General and
asked him to proceed accordingly. As the post of Accountant
is a first entry and promotion post the relevant publication
was made in the *Official Gazette of the Republic of 27.2.76*,
and in response thereof four candidates, including the ap-
10 plicant in this recourse, applied for the two posts in qu-
estion.

The Public Service Commission, at its meeting of 14.4.
1976, decided to call for an interview on 4.5.76, two of
the candidates, including the applicant, and that the Ac-
countant-General should be present.

15 At its meeting of 4.5.76, the Commission decided that
none of the two candidates interviewed was suitable.

The relevant minutes read as follows:-

20 "The Commission as well as the Accountant-General
put several questions to all the candidates on matters
of general knowledge and on matters connected with
the duties of the post as shown in the relevant scheme
of service.

25 The Commission considered the merits, qualifica-
tions, service and experience of the candidates inter-
viewed as well as their performance during the inter-
view (personality, alertness of mind, general intelli-
gence and the correctness of answers to questions put
to them, etc.).

30 The Personal Files and the Annual Confidential Re-
ports of both the above candidates, who were already
in the service, were also taken into consideration.

35 The Commission observed that, during the interview,
Mr. Leonidas A. Papadopoulos did not give satisfactory
replies to questions put to him and generally he did
not prove to be suitable for appointment to the above
post. The Chairman as well as the majority of the
Members of the Commission (namely Messrs. D. Pro-

testos, C. Lapas and M. Economopoulos) held also the view that Mr. Orestis Georghiou was not suitable for appointment to the above post, having regard to his performance at the interview. Mr. Y. Louca was of the opinion that Mr. Georghiou was suitable for appointment to the post of Accountant, Class II. 5

The Accountant-General stated that he knew both the candidates quite well as they had been working in his Department for a long time. With regard to Mr. O. Georghiou the Accountant-General stated that, although the officer in question was not very bright, yet he was developing and showed signs of improvement. As regards Mr. L. A. Papadopoulos the Accountant-General stated that this officer created problems, he was of a difficult character, he was not co-operating with his colleagues and generally he lacked the abilities to undertake the duties of the post of Accountant. 10 15

Bearing in mind all the above, the Commission decided that none of the candidates interviewed was suitable for appointment to the post of Accountant, Class I or Class II, and that the two vacancies in this post be left unfilled for the time being. The Director-General, Ministry of Finance, to be informed accordingly. 20

The decision regarding the unsuitability of Mr. L. A. Papadopoulos was taken unanimously, whereas in the case of Mr. O. Georghiou the decision was taken by majority of 4 votes to 1 (Mr. Y. Louca dissenting)". 25

Hence, the present recourse.

Counsel for applicant in support of his case submitted that the respondent authority was bound to promote the applicant to the post of accountant since he was eligible for such promotion and was not reported upon, according to section 44 (1) (c) of the Public Service Law, 1967, (Law 33/67), in the last two annual confidential reports, as unsuitable for promotion. He further argued that from the facts which were before the respondent Commission at the material time, it was not reasonably open to it to arrive at the conclusion that the applicant was not suitable for pro- 30 35

motion, as it took into account only two factors, namely -

- (a) the impression made at the interview; and
- (b) the remarks of the Head of the Department who, in fact, repeated the remarks appearing in the confidential reports of the applicant.

5
10 The Public Service Commission, he submitted, did not take into account the career of the applicant as a whole, and all the other elements concerning his ability as a public servant. Finally, he submitted, that since the decision complained of was based entirely on the views of the Accountant-General as Head of the Department, it should be considered as not duly reasoned.

15 As regards the first submission of counsel for applicant, I must say that I entirely disagree with his proposition that the Public Service Commission was bound to promote the applicant. In the case of *Papapetrou v. The Republic*, 2 R.S.C.C. 115, it has been decided that the Public Service Commission was not bound to appoint any candidate even though he may have been found to possess the required
20 qualifications specified in the relevant schemes of service, if it was of the opinion that such candidate was not, on the whole, qualified and suitable for such appointment.

25 This principle has been reiterated in the case of *Andreou v. The Republic*, (1973) 3 C.L.R. 101 where at page 104 it is stated that if a suitable candidate is not found, the Commission is not bound to fill a vacancy merely because it has been requested or authorised to do so or because it has advertised the existence of such vacancy or because there exists a qualified candidate.

30 As to the other submissions of counsel for applicant, I must say that I find no merit. It is abundantly clear that the Public Service Commission in taking the decision complained of it took into account all the relevant factors, including the personal files and the confidential reports of the
35 applicant, his performance at the interview and the recommendations made by the Head of the Department. Therefore, it cannot be said that the respondent Commission exer-

cised its discretion in taking the decision complained of, contrary to law or that the said decision is not duly reasoned.

For the reasons stated above, this recourse fails and is dismissed accordingly.

5

There will be no order as to costs.

Recourse dismissed.

No order as to costs.