

1985 July 31

[TRIANTAFYLIDES, P.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

- 1. ROLIS LEWIS,
- 2. PANAYIOTIS PAKOUTAS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Cases Nos. 280/80 and 288/80).

Public Officers—Appointments—Scheme of Service—Interpreted in a way that was reasonably open to the respondent Commission—Applicants failed to establish striking superiority to interested party—Sub judice selection of interested party reasonably open to the Commission—The Court will not substitute its choice to that of the Commission—Sufficient reasoning of sub judice selection emerges from the Minutes of the Commission and other material before it—Recourses dismissed.

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Each of the applicants in the above recourses impugns the promotion of the interested party to the post of Director of Merchant Shipping in preference and instead of him.

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In this case an interim decision* was given on 30.5.84. Its contents should be read together with this judgment and should be treated as incorporated herein. As a result of that decision the interested party's thesis, which had been described by the Director-General of the Ministry of Communications and Works before the respondent Com-

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* See (1985) 3 C.L.R. 2100.

3 C.L.R. **Lewis and Another v. Republic**

mission as having “some relationship to a ship in active service”, was produced before the Court.

5 *Held*, dismissing the recourses (1) From a perusal of the said thesis there comes out such relationship as described by the Director-General of the said Ministry. It follows that the Commission was not labouring under a material misconception of fact. In the light of all relevant considerations it was reasonably open to the respondent Commission to find that the interested party was qualified
10 for appointment under the relevant proviso to the scheme of service in question.

(2) Neither applicant has established that he was strikingly superior to the interested party.

15 (3) It is well settled that this Court will not interfere with the selection of a candidate, if such selection was reasonably open, as it was in the present case, to the respondent Commission.

20 (4) Moreover, from the material in the file and the relevant minutes of the Commission there emerges sufficient reasoning for the selection of the interested party.

*Recourses dismissed.
No order as to costs.*

Cases referred to:

- 25 *Elia v. The Republic* (1985) 3 C.L.R. 38;
Stavrides v. The Republic (1985) 3 C.L.R. 95;
Psaras v. The Public Service Commission (1985) 3 C.L.R. 229;
Karagiorghis v. The Cyprus Broadcasting Corporation (1985) 3 C.L.R. 378;
30 *Ioannou v. The Republic* (1983) 3 C.L.R. 75;
Petrides v. The Republic (1984) 3 C.L.R. 341;
Efthymiou v. The Republic (1984) 3 C.L.R. 1171;
Piperi v. The Republic (1984) 3 C.L.R. 1306.

Recourses.

Recourses against the decision of the respondent to appoint the interested party to the post of Director of Merchant Shipping in preference and instead of the applicants.

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P. Sarris with M. Christodoulou, for applicant in Case No. 280/80.

D. Zavallis with D. Demetriou, for applicant in Case No. 288/80.

M. Photiou, for respondent in Case No. 280/80.

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M. Kyprianou, Senior Counsel of the Republic, with *A. Vassiliades* for respondent in Case No. 288/80.

K. Michaelides with P. Papageorghiou and A. Liatsos for the interested party.

Cur. adv. vult.

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TRIANTAFYLIDIS P. read the following judgment. In this case I have already given an interim decision on the 30th May 1984* and its contents should be read together with this judgment and should be treated as incorporated herein.

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As a result of such decision a thesis of the interested party on "Transportation Costs and Oil Prices", which had been referred to in the relevant minutes of the respondent Public Service Commission, was produced before this Court.

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Having perused the contents of the said thesis, and without having overlooked that it was not primarily concerned with merchant shipping matters, I have reached the conclusion that the way in which it was described by the Director-General of the Ministry of Communications and Works on the 26th May 1980, before the Commission, namely that it was a thesis "which had some relationship to a ship in active service" did not actually mislead the Commission and, consequently, I cannot find that as a

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* Reported in (1985) 3 C.L.R. 2100.

result of such description the Commission has acted in this connection under the influence of a misconception.

5 From a perusal of the contents of the thesis in question there comes out, indeed, their relationship, even though to only a certain degree, to merchant shipping matters and, particularly, to a ship in active service.

10 I cannot, therefore, hold that the Commission was labouring under a material misconception as regards the exact nature of the qualifications of the interested party and, particularly, that it acted under any such misconception in finding that the interested party was qualified for appointment in accordance with the relevant proviso to the scheme of service; and, in the light of all relevant considerations, I am of the view that it was reasonably open
15 to the respondent Commission to find that the interested party was qualified for appointment under the said proviso to the scheme of service, in that he had knowledge of matters relating to merchant shipping, as was shown, also, by his answers when interviewed.

20 There will be dealt with, next, the complaint of the applicants that the interested party could not have been lawfully and validly preferred for appointment instead of them:

25 First, it cannot, in my view, be said that either of the applicants has established that he was strikingly superior to the interested party and that, therefore, the decision of the Commission to prefer the interested party has to be annulled for this reason (see, inter alia, in this respect, *Elia v. The Republic*, (1985) 3 C.L.R. 38, 45, *Stavrides v. The Republic*, (1985) 3 C.L.R. 95, 105, *Psaras v. The Public Service Commission*, (1985) 3 C.L.R. 229, 241, and *Karagiorghis v. The Cyprus Broadcasting Corporation*, (1985) 3 C.L.R. 378, 389).

35 Secondly, it is well settled that this Court will not interfere with the selection of a candidate which was reasonably open to the respondent Commission, as it was in the present instance, and in such a case the Court will not substitute its own choice in the place of that of the Commission (see, inter alia, in this respect, *Ioannou v. The Republic*, (1983)

3 C.L.R. 75, 79, *Petrides v. The Republic*, (1984) 3 C.L.R. 341, 350, *Efthymiou v. The Republic*, (1984) 3 C.L.R. 1171, 1174 and *Piperi v. The Republic*, (1984) 3 C.L.R. 1306, 1311).

Moreover, from the relevant minutes of the Commission, 5
as well as from all other material which was before it and
which is referred to in such minutes, there emerges suffi-
cient reasoning explaining the selection of the interested
party in a manner which shows that it was, indeed, rea-
sonably open to the respondent Commission. 10

For all the foregoing reasons these recourses have to be
dismissed; but with no order as to their costs.

Recourses dismissed.
No order as to costs.