

1986 March 29

[LORIS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

COSTAS STEPHANOU,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Case No. 281/84).

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5 *Public Officers—Promotions—Confidential reports—Inquiry as to—Should not be confined to the last two reports—*  
*Allowance for possible differences when the candidates*  
*have not been reported on by the same reporting or*  
*countersigning officer—Qualifications—Additional quali-*  
*cations not envisaged as an advantage in the scheme of*  
*service—Do not establish by themselves a case of striking*  
*superiority—Seniority—It prevails only if merit and*  
*qualifications are evenly balanced—Recommendation by*  
10 *Head of Department—A factor relevant to merit—Inter-*  
*views, performance at—Weight.*

*The Public Service Law 33/67, ss. 44(3) and 46.*

15 The applicant by means of the present recourse impugns the validity of the decision, whereby the interested party was promoted to the post of Chief School Clerk (Ministry of Education).

20 In effecting the sub judice promotion the respondent Commission took into consideration the confidential reports for the last five years. The interested party is superior to the applicant in terms of merit and he was recommended for promotion by the Head of the Depart-

ment. The applicant is better qualified than the interested party, but his additional qualifications are not envisaged in the scheme of service as an advantage. The applicant is senior to the interested party by 11 months

The applicant complained, inter alia, that the Commission acted contrary to law and the principles of fair administration in that it took into account past confidential reports prejudicial to the applicant and in that it overestimated the performance of the interested party at the interview.

*Held*, dismissing the recourse. (1) In cases of this nature this Court does not intervene in order to set aside a decision unless the applicant is strikingly superior to the one selected for promotion.

(2) The submission of counsel for the applicant that the Commission should have confined its examination to the confidential reports of the last two years cannot be accepted. The Commission should look at past and especially at the most recent reports in order to evaluate the performance of the candidates during their careers as a whole (*HadjiGregoriou v. The Republic* (1975) 3 C.L.R. 477 applied). Some allowance may have to be made for possible differences when the candidates have not been reported on by the same Reporting or Countersigning officer.

In this case it is significant to note that the confidential report on the applicant for 1979-1980 was countersigned by the same officer who countersigned the report on the interested party for 1978-1979. There is no material before the Court indicating the Educational Standard of the reporting officer on applicant, described by the latter's counsel as "layman", but it should be noted that such reports were countersigned either by the Director of Higher and Secondary Education or the Director-General of the Ministry.

(3) The superiority of the interested party in terms of merit as emanates from the confidential reports is enhanced by the recommendation for his promotion by the

Head of the Department.

5 (4) Additional qualifications to those provided in the scheme of service and which are not specified in such a scheme as an advantage do not indicate by themselves striking superiority. Seniority prevails only if the merits and qualifications are evenly balanced.

(5) In the light of the above the conclusion is that the respondent Commission carried out a due inquiry. The applicant failed to prove striking superiority.

10 *Recourse dismissed.*  
*No order as to costs.*

Cases referred to:

- Hadjiannou v. The Republic* (1983) 3 C.L.R. 1041;  
*Hadjisavva v. The Republic* (1982) 3 C.L.R. 76;  
 15 *Georghiou v. The Republic* (1976) 3 C.L.R. 74;  
*HadjiGregoriou v. The Republic* (1975) 3 C.L.R. 477;  
*The Republic v. Petrides* (1984) 3 C.L.R. 378;  
*Korai and Another v. C.B.C.* (1973) 3 C.L.R. 546;  
*Georghakis v. The Republic* (1977) 3 C.L.R. 1;  
 20 *HjiGeorghiou v. The Republic* (1977) 3 C.L.R. 35;  
*Cleanthous v. The Republic* (1978) 3 C.L.R. 320;  
*Papadopoulos v. P.S.C.* (1985) 3 C.L.R. 405;  
*Partellides v. The Republic* (1969) 3 C.L.R. 480;  
*Ioannides v. The Republic* (1979) 3 C.L.R. 628.

25 **Recourse.**

Recourse against the decision of the respondent to promote the interested party to the post of Chief School Clerk

(Ministry of Education) in preference and instead of the applicant.

*E. Efsthion*, for the applicant.

*M. Florentos*, Senior Counsel of the Republic,  
for the respondent. 5

*Cur. adv. vult.*

LORIS J. read the following judgment. The applicant by means of the present recourse impugns the decision of the respondent Public Service Commission, published in the Official Gazette of the Republic under No. 1945 of 6.4.84 (vide ex. 1 attached to the recourse), whereby the interested party was promoted to the post of the Chief School Clerk (Ministry of Education) in preference to and instead of the applicant. 10

The said decision of the P.S.C. is challenged by the applicant as ill-founded and therefore liable to be set aside for abuse of power. The Commission is charged with failure to carry out a proper inquiry into the suitability of the candidates which allegedly resulted to misconception of material facts in connection with applicants seniority, merit and qualifications. The Commission is further charged with having acted contrary to Law and the principles of fair administration by taking into consideration on the one hand past confidential reports prejudicial to the applicant, whilst overestimating on the other, the performance of the interested party at the interview. 15  
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The decision of the Commission is also impugned for lack of due reasoning.

Before proceeding to examine the complaints of the applicant. I feel that I should repeat at this early stage what has been repeatedly emphasized and recently reiterated by the Full Bench of this Court in the case of *HadjiIoannou v. The Republic* (1983) 3 C.L.R. 1041 at p. 1045: 30

“An administrative Court cannot intervene in order to set aside the decision... unless it is satisfied, by an applicant in a recourse before it, that he was an eligible candidate who was strikingly superior to the 35

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—(*Odyseas Georghiou v. Republic* (1976) 3 C.L.R. 74 at p. 83).”

The notion of “striking superiority” has been analysed by Piki’s J. In *HjiSavva v. The Republic* (1982) 3 C.L.R. 76 at p. 78 and I fully endorse the analysis in question.

### *Merit*

It is apparent from the sub judice decision, that the respondent P.S.C. took into consideration, inter alia, the findings of the Departmental Committee set up for the purpose; it is clear from the contents of the report of the said committee (vide page 2 of the report in Appendix 4 attached to the opposition) that the Departmental Committee took into account the confidential reports of the candidates for the last five years.

Although in the minutes of the meeting of the P.S.C. held on 23.1.84 (vide page 8 of Appendix 6 attached to the opposition) it is stated that the P.S.C. relied on the confidential reports of the candidates of the last three years, yet in their final meeting of 27.2.84, when the sub judice decision was taken (vide pages 3 and 4 of Appendix 7 attached to the opposition) they say that they have “noted” the confidential reports of the candidates for the last five years.

In the circumstances it may be assumed that the respondent P.S.C. took into consideration the confidential reports of all candidates for the last five years.

The applicant in the said confidential reports was rated as follows:

(a) Excellent (8-3-1) for 1978-1979

(b) Very good (7-5-0) for 1979-1980

(c) Excellent (10-2-0) for 1980-1981

(d) Excellent (12-0-0) for 1981-1982 and 1982-1983.

The interested party was rated excellent (12-0-0) for all the years commencing from 1978 up to and including 1983.

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It is the submission of the applicant in this connection that the P.S.C. should confine its examination to the confidential reports of the last two years only; with respect I cannot agree with this submission. The learned President of this Court in delivering the judgment of the Full Bench in the case of *HjiGregoriou v. The Republic* (1975) 3 C.L.R. 477, stated the following at p. 483:

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“We do agree with both the learned trial Judge and counsel for the appellant that it is necessary, in deciding on the merits of candidates, to look at past annual confidential reports, and especially at the most recent ones in order to evaluate the performance of the candidates during their careers as a whole.”

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As regards the preparation of the confidential reports by different reporting officers the following were stated in the judgment of the Full Bench in *Georghiou v. The Republic* (1976) 3 C.L.R. 74 at p. 81:

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“We do agree that it is open to the Commission—as well as to an administrative Court trying a recourse—to give due weight to the fact that different Reporting Officers cannot be treated as having made their assessments by using identical standards and that, therefore, some allowance may have to be made for possible difference in the evaluation of various candidates when they have not been reported on by the same Reporting or Countersigning Officer (see inter alia *Kousoulides and others v. The Republic* (1967) 3 C.L.R. 438, 449 *Georghiades and Another v. The Republic* (1970) 3 C.L.R. 257, 267, *Aristocleous and another v. The Republic* (1974) 3 C.L.R. 321 at pp. 325-326).”

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In this connection I shall confine myself in making the following observations:

(a) Although the majority of the confidential reports of the interested party were made by a different reporting officer from the one who made the reports of the applicant, yet it is significant to note that the confidential report of the interested party for the year 1979-1980 was countersigned by the same officer who countersigned the confidential report of the applicant for 1978-1979 notably the then Director-General of the Ministry of Education Mr. Adamides.

10 The said report of the interested party explaining the reasons for his rating, countersigned by the then Director-General, states the following:

15 «Ὁ υπάλληλος βαθμολογείται ὡς ἐξαιρετος μὲ τὴν πεποίθησιν ὅτι εἶναι τέλειος ἀπὸ πάσης πλευρᾶς. Πραγματικὰ πρόκειται γιὰ δημόσιον υπάλληλον πολὺ ὑψηλοῦ ἐπιπέδου καὶ ποῦ τιμᾶ τὴν θέσιν του σπὸν ἀνώτατο δυνατό βαθμό».

20 ("The officer is rated as excellent with the conviction that he is perfect from every aspect. Indeed he is of a very high standard and honours his position to the highest possible degree").

The aforesaid report of the applicant explaining the reasons for his rating, countersigned as stated above by the same countersigning officer, states:

25 «Εἶναι πολὺ ἐμπειρος καὶ ικανὸς γιὰ τὴν ἐργασία τοῦ βιβλιοθηκαρίου ποῦ ἐπιτελεῖ. Συνεχῶς συμπληρώνει τὰς γνώσεις του».

("He is very experienced and capable for the job of librarian. He constantly improves his knowledge").

30 (b) There is no material before me indicating the educational standard of the Chairman of the Limassol Greek School Committee, the reporting officer of the interested party who is referred to by learned counsel for the applicant in his written address as "layman", the only thing I  
35 have noted from the confidential reports of the interested party is that they are countersigned either by the Director of Higher and Secondary Education or the Director-General of the Ministry of Education.

The recommendations of the Head of the Department, the then Director-General of the Ministry of Education appear at p. 7 of Appendix 6, the minutes of the meeting of the P.S.C. held on 23.1.84. It is a fact that the said recommendations were in favour of the interested party. 5  
And as it is provided in s. 44(3) of Law 33/67 the P.S.C. "shall have due regard to the annual confidential reports on the candidates and to the recommendations made in this respect by the Head of Department in which the vacancy exists." 10

As regards the performance of a candidate at the interview it is well settled that the "Commission in considering the merits, qualifications and experience and generally the suitability of a candidate to a given post, should also take into account the impression created by such candidate at the relevant interview (vide *The Republic v. Savvas Petrides* (1984) 3 C.L.R. 378 at p. 386). Of course undue weight should not be placed on the impression created by such interviews. 15

In the present case having gone carefully through (a) 20 the minutes of the last meeting held by P.S.C. on 27.2.84, when, inter alia, the interview of the candidates took place, and (b) the relevant part of the sub judge decision, I am satisfied that the respondent Commission did not attach undue weight on the impression created by the aforesaid 25 interview.

### *Qualifications*

In this respect it must be stated at the outset that there is no suggestion that the interested party lacked the qualifications envisaged by the scheme of service, which are set out in appendix "3. Γ" attached to the opposition; nor is there any suggestion that such a scheme stipulated additional academic qualifications as an advantage. In fact no mention of additional qualifications whatever is made in the aforesaid scheme of service. 30  
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It is true that the applicant is better qualified than the interested party. A mere glance at the qualifications of the interested party and the applicant as they appear in Appendix 3A indicates that the Academic qualifications



of the applicant are extremely superior; he has inter alia a "Business Course Certificate" from the American University of Beirut and a diploma in Literature from the University of Ioannina - Greece; but it is true that these  
 5 additional qualifications are not envisaged in the said scheme of service as an advantage.

In the case of *Hjiloannou v. Republic* (1983) 3 C.L.R. 1041 it was held by the Full Bench of this Court (pp. 1046-1047) that "Possession of academic qualifications  
 10 additional to those required by the scheme of service, which are not specified in the scheme of service as an advantage, should not weigh greatly in the mind of the Commission who should decide in selecting the best candidate on the totality of the circumstances before them.  
 15 Additional academic qualifications to those provided by the scheme of service do not indicate by themselves a striking superiority. (See *Elli Chr. Korai and another v. C.B.C.* (1973) 3 C.L.R. 546, *Andreas D. Georghakis v. The Republic* (1977) 3 C.L.R. 1, *Evangelos HjiGeorghiou v. The Republic* (1977) 3 C.L.R. 35, *Cleanthis Cleanthous v. The Republic* (1978) 3 C.L.R. 320).  
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It is apparent from the perusal of the sub judge decision (vide p. 4 of Appendix 7 attached to the opposition) that the P.S.C. directed its mind to the above principles in  
 25 reaching at the decision which is being impugned by the present recourse.

### *Seniority*

The applicant as well as the interested party were promoted to the permanent post of Senior School Clerk on  
 30 the same day i.e. the 1st October 1982.

According to the provisions of s: 46(2) of the Public Service Law 1967 (Law 33/67) "In the case of simultaneous appointment or promotion (or secondment - vide s. 5  
 35 of Law 10/83) to the particular office or grade of the same office, seniority shall be determined according to the officers' previous seniority".

And according to the interpretation section (sub-section 7) of section 46 "previous seniority" means seniority of

the officers concerned in the grade or office held by them immediately before they entered their present grade or office..."

The applicant was promoted to the post of permanent School Clerk 1st grade on 1.5.64 whilst the interested party was promoted to the same post on 1.4.65; therefore the applicant has a seniority of 11 months over the interested party. 5

Summing up I must state that the interested party presents a better picture as regards merit than the applicant: 10

In the first place there is a difference in favour of the interested party as regards the rating in the confidential reports of the last five years. It is true that such a difference is very slight if the confidential reports for the last three years only were to be taken into consideration. 15

On the other hand, the difference in merit, however slight it may emerge from the confidential reports, it is definitely enhanced by the strong recommendations in favour of the interested party by the Head of the Department, recommendations which should be given due regard by the P.S.C. as envisaged by s. 44(3) of Law 33/67 and which constitute a most vital consideration which cannot be disregarded (*Theodossiou v. The Republic*, 2 R.S.C.C. 44). 20

As regards qualifications it is a fact that applicant had manifestly superior Academic qualifications than the interested party but these additional qualifications were not specified in the Scheme of Service as an advantage and they do not indicate by themselves "striking superiority" (vide *HjiIoannou v. Republic* (supra)—and also the majority decision of the Full Bench in *Andrestinos Papadopoulos v. P.S.C.* (1985) 3 C.L.R. 405). 25 30

In connection with seniority the applicant has 11 months seniority over the interested party, but the seniority can have a decisive effect only where the merits and qualifications of the parties are evenly balanced, (*Partellides v. The Republic* (1969) 3 C.L.R. 480, and *Ioannides v. The Re-* 35

*public* (1979) 3 C.L.R. 628), whilst in the present case the interested party is better merited, as above stated.

5 In the light of the above, I am satisfied that the respondent P.S.C. carried out due inquiry, taking into consideration all relevant criteria and properly applying the Law in reaching at the sub judice decision which was reasonably open to it.

10 The applicant failed to prove striking superiority, as already stated; on the contrary the interested party is better merited for the reasons already explained, whilst as regards qualifications inspite of applicant's manifestly superior Academic qualifications, such qualifications do not indicate by themselves "striking superiority" as they were not envisaged by the relevant Scheme of Service as  
15 an advantage.

20 Before concluding I feel that I should refer to the complaint that the sub judice decision was not duly reasoned: Having examined the sub judice decision I hold the view that it clearly conveys the reasoning why the interested party was preferred for the said promotion instead of the applicant; furthermore it was said time and again that the reasoning behind a decision may be legitimately supplemented from the material contained in the files; and the files before me, to which extensive reference  
25 was made in the judgment, contain more than the required material which can support the sub judice decision allowing at the same time an unhindered judicial scrutiny.

In the result the present recourse fails and is accordingly dismissed; let there be no order as to its costs.

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*Recourse dismissed.  
No order as to costs.*