

1986 January 13

[TRIANTAFYLIDES, P., A. LOIZOU, LORIS, STYLIANIDES,
KOURRIS, JJ.]

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Appellant,

v.

ZACHARIAS ZACHARIADES,

Respondent.

(Revisional Jurisdiction Appeal No. 439).

Public Officers—Promotions—The Public Service Law 33/67, s. 44(3)—Merit, qualifications, seniority—They should be weighed together—S. 44(3) does not provide that anyone of the said criteria has, in any event, greater importance than the other two—Significance attributed to each of the said criteria, when weighed together—A matter for the Commission—Provided it exercises correctly its discretionary powers—Interviews, performance at—Significance. 5

Administrative Law—Promotions of Public Officers—Court does not substitute its discretion with that of the appointing organ—And does not interfere if the decision reached was reasonably open to it. 10

This is an appeal from the judgment of a Judge of this Court, whereby the promotion of the interested party to the post of Hospital Stewart in the Department of Medical and Public Services was annulled. 15

Held, allowing the appeal: (1) This Court does not annul a decision of an appointing authority, such as the appellant Commission, which, in accordance with the law applicable to, and the facts of, a particular case was rea- 20

sonably open to it; and this Court does not, in a case of this nature, substitute its own discretion as regards the choice of the most suitable candidate in the place of the discretion of the competent organ.

5 (2) On the basis of the material before the Court it was reasonably open to the appellant Commission to select the interested party.

10 (3) The material before the Court does not establish that the Head of the Department went as far as to recommend to the Commission the respondent as the candidate most suitable for promotion.

15 (4) The three criteria set out in s. 44(3) of Law 33/67, namely merit, qualifications and seniority, have to be weighed together. The performance at the interview, is a process helping in the evaluation of the candidates, mainly from the point of view of merit and, also, to a certain extent of qualifications. The appointing authority, in weighing together the said criteria, may attribute such significance to them as it may deem proper, provided it exercises correctly, in the course of doing so, its relevant discretion. It is not provided in s. 44(3) that anyone of the said criteria has, in any event, greater importance than the other two. The Court, therefore, cannot agree that the respondent should have, in any event, been selected on account of his qualifications.

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Appeal dismissed. Sub judice promotion confirmed. No order as to costs.

Cases referred to:

Georghiou v. The Republic (1976) 3 C.L.R. 74;

30 *Petrides v. The Republic* (1984) 3 C.L.R. 341;

Constantinou v. The Republic (1984) 3 C.L.R. 498;

Efthymiou v. The Republic (1984) 3 C.L.R. 1171;

Papadopoulos v. Public Service Commission (1985) 3
C.L.R. 405;

Christou v. The Republic, 4 R.S.C.C. 1;

Georghiades v. The Republic (1970) 3 C.L.R. 257;

Piperi v. The Republic (1984) 3 C.L.R. 1306. 5

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Pikis, J.) given on the 31st January, 1985 (Revisional Jurisdiction Case No. 134/84)* whereby the promotion of the interested party to the post of Hospital Steward in the Department of Medical and Public Health Services was annulled. 10

N. Charalambous, Senior Counsel of the Republic with
A. Vassiliades, for the appellant.

A. S. Angelides, for the respondent. 15

Cur. adv. vult.

TRIANAFYLIDIS P. read the following judgment of the Court. The Public Service Commission has appealed from the first instance judgment of a Judge of this Court by means of which, on the 31st January 1985, he annulled the as from the 15th March 1984 promotion of K. Mavrakis to the post of Hospital Steward in the Department of Medical and Public Health Services. Against the said promotion the respondent had filed a recourse (No. 134/84), under Article 146 of the Constitution, and it was as a re- 20 25

* Reported in (1985) 3 C.L.R. 443.

sult of the determination of this recourse that the promotion was annulled.

5 We have considered the reasoning on the basis of which the promotion of the said Mavrakis, an interested party in the present proceedings, was annulled by the learned trial Judge and we have considered, also, the arguments advanced before us by counsel against and in support, respectively, of the judgment of the trial Judge.

10 In our opinion this appeal has to be determined in accordance with the following two basic principles:

15 First, that an administrative court does not annul a decision of an appointing authority, such as the appellant Commission, which, in accordance with the law applicable to, and the facts of, a particular case, was reasonably open to such authority (see, inter alia, *Georghiou v. The Republic*, (1976) 3 C.L.R. 74, 82 and more recently *Petrides v. The Republic*, (1984) 3 C.L.R. 341, 350, *Constantinou v. The Republic*, (1984) 3 C.L.R. 498, 502, *Efthymiou v. The Republic*, (1984) 3 C.L.R. 1171, 1174 and *Papadopoulos v. The Public Service Commission*, (1985) 3 C.L.R. 405, 413).

25 Secondly, that an administrative court does not, in a case of this nature, substitute its own discretion as regards the choice of the most suitable candidate for promotion or appointment in the place of the discretion of the competent organ (see, in this respect, *Christou v. The Republic*, 4 R.S.C.C. 1, 6, *Georghiades v. The Republic*, (1970) 3 C.L.R. 257, 268 and *Piperi v. The Republic*, (1984) 3 C.L.R. 1306, 1311).

30 On the basis of the material before us, and in the light of the arguments advanced during the hearing of this appeal, we have reached the conclusion that in the present case it was reasonably open to the appellant Commission to select interested party Mavrakis as the most suitable can-

didate for promotion to the post in question and that, consequently, the Supreme Court, as an administrative Court, cannot go so far as, in effect, to substitute its own discretion in the place of that of the appellant Commission as regards the choice of the most suitable candidate. 5

It seems that the learned trial Judge was led to adopt the course of annulling the sub judice decision of the appellant Commission because of the view that the Director of Medical and Public Health Services, as the Head of the Department concerned, had recommended the respondent as the most suitable candidate and the appellant Commission had disregarded without due reasoning his recommendation. In our opinion, however, the material before us does not establish that the said Director went actually so far as to recommend the respondent as being the candidate who was the most suitable for promotion to the post in question. 10 15

Also, we are of the view that the three criteria which are set out in section 44(3) of the Public Service Law, 1967 (Law 33/67), namely merit, qualifications and seniority, have to be weighed together, bearing in mind, too, the performance of the candidates when interviewed, which is a process helping in the evaluation of the candidates, mainly from the point of view of merit and, also, to a certain extent, of qualifications as well. 20 25

An appointing authority, such as the appellant Commission, when weighing together the said three criteria, in order to find the most suitable candidate, may attribute such significance to them as it may deem proper, provided that it exercises correctly, in the course of doing so, its relevant discretionary powers (see the *Georghiou* case, supra, 82); and it is not provided by section 44(3) that any one of the three criteria has, in any event, greater importance than the other two. 30

We, therefore, cannot agree that, in the present case, the respondent should have, in any event, been selected for promotion in view of his academic qualifications. 35

For all the foregoing reasons this appeal is allowed and the sub judice decision of the appellant Commission is confirmed under Article 146.4 of the Constitution.

5 We have decided not to make any order as to the costs of this appeal.

Appeal allowed.

No order as to costs.