

1984 February 4

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANTONIOS KOUFETTAS,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

*(Cases Nos. 80/77, 81/77).*

*Public Officers — Promotions — Qualifications — Scheme of service — Very good knowledge of Greek and English — Long and satisfactory service with Government and the candidate's educational qualifications rendered in this case the decision that such candidate possessed such qualification reasonably open to the Commission.*

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*Public Officers — Secondments — Qualifications — Possession of — Judicial control — Principles applicable.*

By means of recourse 81/77 the applicant challenges the validity of the promotion of interested party Marinou to the post of Senior Surveyor in the Department of Lands and Surveys on the following grounds, namely that he was, wrongly, not treated as a candidate, that he was better qualified than Mannos and that the Commission wrongly found that Marinou had the required under the scheme of service qualification of a very good knowledge of English and Greek, and by means of recourse 80/77 he challenges the secondment, made on the same day as the aforesaid promotion, of interested party Pantazis to the post of Senior Surveyor in the said Department, on the ground that as Pantazis had joined the surveying department in 1973, he could not have been treated as possessing the qualification of «long experience» required by the scheme of service.

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Held, *dismissing recourse 81/77*: (1) It is not correct that the applicant was not considered for promotion.

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(2) The qualifications of the applicant were more or less equal or equivalent to those of the interested party, but even if it is assumed that they were better, the scales would not have been tilted in favour of applicant, because such a

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factor should be weighed against all other relevant factors In the light of the material before the Court, the sub judice promotion was reasonably open to the Commission

5 (3) Bearing in mind the long and satisfactory service of the interested party with the Government as well as his educational qualifications it was reasonably open to the Commission to find that he possessed the qualification of very good knowledge of Greek and English

10 Held, further, *dismissing recourse 80/77* The matter whether a candidate possesses the required qualifications is a matter for the Commission and this Court cannot interfere if its decision was in this respect, as indeed in the light of the material before the Court it was in this case, reasonably open to the Commission

*Recourses dismissed*  
*No order as to costs*

15 *Cases referred to*

*Koufettas v The Republic* (1978) 3 C L R 225,

*Koufettas v The Republic* (1980) 3 C L R 226,

*Koufettas v The Republic* (1983) 3 C L R 1252,

*Kolokotronis v. The Republic* (1980) 3 C L.R 418,

20 *Miliatos v The Republic* (1981) 3 C L R 85,

*Constantinou v The Republic* (1983) 3 C L R 136,

*Stylianou v The Public Service Commission* (1980) 3 C L R 11,

*Michael (No 1) v The Republic* (1975) 3 C L R 136,

*Michael (No 2) v The Republic* (1975) 3 C L R 432

25 **Recourses.**

Recourses against the decision of the respondent to promote the interested parties to the post of Senior Surveyor in the Department of Lands and Surveys in preference and instead of the applicant.

30 *E. Efstathiou with C. Loizou*, for the applicant.

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

*T. Papadopoulos*, for the interested parties.

*Cur. adv. vult.*

TRIANTAFYLLIDES P. read the following judgment. By means of the present recourses, which in view of their nature were heard, and are being determined, together, the applicant challenges (in case 80/77) the decision of the respondent Public Service Commission to promote Th. Marinos, and (in case 81/77) its decision to second A. Pantazis, to the post of Senior Surveyor in the Department of Lands and Surveys as from the 15th November 1976, instead of the applicant.

The salient facts of these cases are the following:

On the 6th September 1976 the Director of the Department of Lands and Surveys forwarded to the Public Service Commission a list showing his rating of the suitability of each candidate for promotion, including the applicant and the said Marinos and Pantazis.

At its meeting on the 10th September 1976 the respondent Commission filled a vacancy in a permanent post of Lands Officer (Surveying Branch) by promoting to it Senior Surveyor K. Panayiotou as from the 15th November 1976.

As a result of such promotion a consequential vacancy was created in a permanent post of Senior Surveyor and at the same meeting, on the 10th September 1976, the Commission proceeded to fill it by promoting thereto, as from the 15th November 1976, Th. Marinos (who is an «interested party» in the present proceedings). At that time interested party Marinos was serving on secondment to the temporary post of Senior Surveyor.

Because of the promotion of interested party Marinos a consequential vacancy was created in a temporary post of Senior Surveyor and the Commission, again at the same meeting, on the 10th September 1976, seconded to it, as from the 15th November 1976, A. Pantazis (who is, also, an interested party in the present proceedings).

As a result the present recourses 80/77 and 81/77 were filed. Recourse 81/77 was presented initially as attacking the secondment of «Panayiotou», but counsel for the applicant applied, and was allowed, to substitute in the place of «Panayiotou» interested party Pantazis as the Court was duly

satisfied that the name of «Panayiotou» had been referred to in the motion for relief due to an oversight (see *Koufettas v. The Republic*, (1978) 3 C.L.R. 225).

5 Before proceeding with the examination of the merits of the present cases I must refer, for the purpose of completing the overall picture, to certain developments which occurred after judgment had been reserved in these two cases and which, obviously, cannot affect their outcome.

10 In 1978 there was abolished the temporary post of Senior Surveyor to which interested party Pantazis had been seconded and on the 6th May 1978 the respondent Commission decided to promote him to a corresponding permanent post of Senior Surveyor but as a result of a new recourse of the applicant in the present case such promotion was annulled as having been  
15 effected contrary to law (see *Koufettas v. The Republic*, (1980) 3 C.L.R. 226).

It appears that, subsequently, the Commission reconsidered the matter and promoted Pantazis once again to the permanent post of Senior Surveyor, with retrospective effect as from the 1st  
20 January 1978. Such promotion was also challenged by the applicant in the present case and it was annulled for the reasons stated in a judgment delivered on the 21st December 1983 (see *Koufettas v. The Republic*, case 499/80, not yet reported)\*.

I revert now to the issues arising in the present cases and I shall  
25 commence with case 80/77 in which there is challenged the promotion of interested party Marinos to the post of Senior Surveyor:

Counsel for the applicant had submitted that as his client is not expressly mentioned in the relevant minutes of the respondent  
30 Commission he was, wrongly, not treated as a candidate for promotion, even though he was holding the immediately lower post of Surveyor, 1st Grade, and was qualified for promotion; but I find no merit in this submission because there emerges clearly from the relevant minutes of the respondent Commission that in  
35 filling the vacancy in the post of Senior Surveyor the Commission had considered as candidates all the officers serving in the post of Surveyor, 1st Grade, one of which was held by the applicant.

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\* Reported in (1983) 3 C.L.R. 1252.

It has been, also, submitted by counsel for the applicant that his client was better qualified than interested party Marinos. After, however, perusing the relevant material before me I have come to the conclusion that the qualifications of the applicant and those of the interested party were more or less equal. But even assuming that the qualifications of the applicant were superior to those of this interested party this factor by itself could not, and should not, have tilted the scales in favour of the applicant (see, inter alia, in this respect, *Kolokotronis v. The Republic*, (1980) 3 C.L.R. 418, 428) as the Commission had to weigh such factor together with all other relevant considerations in order to reach its sub judice decision as to who was the most suitable for promotion candidate; and I am of the opinion that in the present instance it was reasonably open to it to select the interested party as being on the whole the best.

It has been, moreover, contended by counsel for the applicant, that the Commission wrongly found that this interested party had a very good knowledge of Greek and English as required by the scheme of service.

I am of the view that it was reasonably open to the respondent Commission, bearing in mind the long and satisfactory service in Government of this interested party, coupled with his educational qualifications, to come to the conclusion that this interested party possessed the required under the relevant scheme of service very good knowledge of Greek and English (see, inter alia, in this respect, *Miliatos v. The Republic*, (1981) 3 C.L.R. 85, 90, and *Kolokotronis*, supra, 427).

For all the foregoing reasons the recourse of the applicant against the promotion of interested party Marinos fails and it has to be dismissed accordingly.

I come now to recourse 81/77 against the secondment of interested party Pantazis to a temporary post of Senior Surveyor:

It has been argued on behalf of the applicant that he was senior to interested party Pantazis in the post of Surveyor, 1st Grade; and, also, that, as under the scheme of service long experience is required in surveying matters and this interested party had joined the Surveying section only in 1973, he could not have been treated as possessing such experience and as being qualified for promotion.

It has been repeatedly stated by this Court on previous occasions that the decision as to whether a certain candidate possesses the required under the scheme of service qualifications is a matter coming within the ambit of the discretionary powers of the Public Service Commission and that the Court will not interfere with its decision in this respect if it was reasonably open to the Commission to find that he was qualified (see, inter alia, *Constantinou v. The Republic*, (1983) 3 C.L.R. 136, 141, *Stylianou v. The Public Service Commission*, (1980) 3 C.L.R. 11, 17, 18 and *Michael (No. 1) v. The Republic*, (1975) 3 C.L.R. 136, 141 and on appeal, *Michael (No. 2) v. The Republic*, (1975) 3 C.L.R. 432).

In the present case it appears from the relevant minutes of the Commission that the factor of the experience of the candidates was considered by the Commission, together with all other relevant matters, in arriving at the conclusion that interested party Pantazis was on the whole the best and I do not think that there is any reason for holding that the experience of the said interested party was so short as to render him not qualified for promotion under the relevant scheme of service.

It is also, to be clearly derived from the minutes of the Commission that all the facts appertaining to each one of the candidates serving in the post of Surveyor, 1st Grade, were taken into consideration and proper weight was given to the merits, qualifications, seniority, service and experience of these candidates, as well as to the views and recommendations of the Head of Department who had recommended for promotion this interested party.

In the light of the foregoing I am of the opinion that it was, in the circumstances, reasonably open to the respondent Commission to prefer this interested party to the applicant, in spite of the seniority of the latter.

For all the above reasons I am of the opinion that recourse 81/77 fails, too, and has to be dismissed accordingly.

I shall not, however, make any order as costs of these two recourses.

*Recourses dismissed.  
No order as to costs.*