

1987 September 24

[LORIS J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ELENI P KOULIA,

v

*Applicant,*

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION

*Respondent*

*(Case No 914/85)*

*Public Officers — Promotions — Scheme of Service — Interpretation of — Judicial control — Principles applicable*

*Legitimate interest — Appointments/Promotions of Public Officers — Person not qualified under the scheme of service for the post in question — Lacks legitimate interest to challenge the appointment/promotion of somebody else to such post*

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By means of this recourse the applicant challenges the promotion of the interested parties to the post of Senior Medical Officer. The respondent Commission raised the preliminary objection that the applicant lacks legitimate interest, because she does not possess qualification (1) of the Scheme of Service.

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The applicant admitted that she does not possess the said qualification, but argued that she was qualified for promotion, because she satisfies the «Note»\* of the Scheme of Service.

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It must be noted that the «Note» was applicable for the filling of the vacant posts «for the first time after the approval of the present scheme of service». When the scheme was approved there were 15 vacant posts of Senior Medical Officer, which were filled by decisions dated 31 8 82 and 22 11 84.

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It is obvious that in effecting the sub judge promotions the respondent Commission took the view that the «note» could not be applied «ad infinitum», but it was only a transitional provision.

Held, dismissing the recourse: (1) The interpretation of a scheme of service is within the province of the Public Service Commission. The Court will not

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\* Quoted at pp 1399-1400 post

interfere if such interpretation was reasonably open to it The interpretation given in this case to the scheme in question was reasonably open to the Commission

(2) A person, who is not qualified under the scheme of service for a post, does not possess a legitimate interest to challenge the appointment or promotion of somebody else to such post 5

*Recourse dismissed*  
*No order as to costs*

*Cases referred to*

<i>Papapetrou v Republic</i> , 2 R S C C 61,	10
<i>Petsas v Republic</i> , 3 R S C C 60,	
<i>Republic v Arvaliots</i> (1971) 3 C L R 89,	
<i>Vryonides v Republic</i> (1984) 3 C L R 1567,	
<i>Frangoullides and Another v P S C</i> (1985) 3 C L R 1680,	
<i>Republic v Xinan &amp; Others</i> (1985) 3 C L R 1922,	15
<i>Nicolaou v Republic</i> (1985) 3 C L R 2471,	
<i>Makns v Republic</i> (1986) 3 C L R 10,	
<i>Neophytou v Republic</i> , 1964 C L R 280,	
<i>Santos and Others v Republic</i> (1969) 3 C L R 28,	
<i>Miltadou v Republic</i> (1969) 3 C L R 210,	20
<i>Constantinidou &amp; Others v Republic</i> (1974) 3 C L R 416,	
<i>Nicolaou &amp; Others v Republic</i> (1985) 3 C L R 2471	

**Recourse.**

Recourse against the decision of the respondent to promote the interested parties to the post of Senior Medical Officer in the Department of Medical and Public Health Services in preference and instead of the applicant 25

*M Savva (Mrs.) for Chr. Mitsides*, for applicant.

*P. Hjidemetriou*, for the respondent.

*Cur. adv vult.* 30

LORIS J. read the following judgment. The present recourse is directed against the decision of the respondent P.S.C. dated 16.7.85, published in the Official Gazette of the Republic on 20.9.85, whereby the interested parties namely Charitini  
 5 Komodiki and Michael Voniatis were promoted to the post of Senior Medical Officer in the Department of Medical and Public Health Services as from 1.8.1985, in preference to and instead of the applicant.

The respondent P.S.C. in its opposition filed, raises the  
 10 preliminary objection that the applicant lacks legitimate interest «to file and pursue the present recourse». As it transpires clearly from the opposition and the written address of the respondent Commission the gist of the preliminary objection is to the effect that the applicant does not possess qualification (1)\* envisaged by  
 15 the scheme of service approved by the Council of Ministers on 25.6.1981 under No. 20530 (Vide Appendix «D» attached to the opposition) whilst both interested parties possess the aforesaid qualification (Komodiki: possesses Diploma in Public Health of the Royal Institute of Public Health & Hygiene U.K - and Voniatis:  
 20 possesses Degree of Master of Arts in Health Services Studies of the University of Leeds.)

Learned counsel for the applicant in his written address though admitting that the applicant does not possess qualification (1) of the Scheme of Service, submitted that the applicant could avail  
 25 herself of the provisions of First Note to the aforesaid scheme of service which reads as follows:

«Σημείωσις:

Διά την πλήρωσιν των κενών θέσεων διά πρώτην φοράν  
 30 μετά την έγκρισιν του παρόντος σχεδίου υπηρεσίας, δύνανται να προαχθούν και ιατρικοί λειτουργοί οι οποίοι:

(α) δεν κατέχουν το εις το (1) ανωτέρω απαιτούμενον προσόν και

(β) δεν έχουν διετή τουλάχιστον υπηρεσίαν εις αγροτικών Υγειονομικών Κέντρον ή/και Τμήματα Πρώτων Βοηθειών,  
 35 νοουμένου ότι έχουν δεκαετή τουλάχιστον άσκησιν της ιατρικής εκ της οποίας 7ετή τουλάχιστον υπηρεσίαν εις τας θέσεις Ιατρικού Λειτουργού, 1ης και 2ας Τάξεως.»

\* *Diploma or title or equivalent qualification in Public Health or the Administration of Health Services and/or Hospitals.*

(English Translation:

«Note:

For the filling of the vacant posts for the first time after the approval of the present scheme of service there may also be promoted medical officers as well, who: 5

(a) Do not possess the qualification required under (1) above, and

(b) Have no service of at least two years at a Rural Health Centre and/or Casualty Department, provided that they have at least ten years practice in medicine out of which at least 7 years service in the posts of Medical Officer 1st and 2nd Class.» 10

It is the contention of the respondent P.S.C. and it is crystal clear from the material before me that when the aforesaid scheme of service was approved on 25.6.81 there were 15 vacant posts of Senior Medical Officer; these posts were filled in by the respondent Commission on 31.8.82 (11 posts) and the remaining 4 posts on 22.11.84. On both the aforesaid occasions it is clear that the respondent Commission considered and applied the aforesaid «Note» to the Scheme of service as the said 15 vacant posts were filled in «for the first time after the approval of the present scheme of service.» During the process of filling the above 15 posts the respondent Commission applied the «Note» to the Scheme of Service and considered the present applicant as eligible for promotion (as the applicant herself maintains in her written address in the present recourse and as it is apparent from the relevant extracts attached thereto). 15 20 25

It is clear from the above that the respondent P.S.C. in holding that this time the applicant did not possess the qualification (1) of the Scheme of Service decided in effect that the «note» to the Scheme of Service could not be applied «ad infinitum» for the promotion to vacant posts but it was only a transitional provision «for the filling of the vacant posts for the first time after the approval of the present scheme of service». 30

It is well established principle that the interpretation of a scheme of service is within the province of the P.S.C.; and this Court will not interfere if such interpretation was reasonably open to it. (Vide inter alia: *Papapetrou v. Republic*, 2 R.S.C.C. 61; *Petsas v. Republic*, 3 R.S.C.C. 60; *Republic v. Aivaliotis* (1971) 3 C.L.R. 89; *Vryonides v. Republic* (1984) 3 C.L.R. 1567; *Frangoullides and* 35

*Another v. P.S.C.* (1985) 3 C.L.R. 1680; *Republic v. Xinari & Others* (1985) 3 C.L.R. 1922; *Nicolaou v. Republic* (1985) 3 C.L.R. 2471; *Makris v. Republic* (1986) 3 C.L.R. 10).

5 Having given to the matter my best consideration, bearing in mind the wording of the «Note» of the aforesaid Scheme of Service, the material before me, which was also before the P.S.C. including letter Ex. X, I hold the view that the interpretation of the scheme of service and the relevant decision of the respondent P.S.C. was reasonably open to it.

10 It is well established that a person who is not qualified under the Scheme of service for a post, does not possess a legitimate interest to challenge the appointment or promotion of somebody else to such post (*vide inter alia: Neophytou v. Republic*, 1964 C.L.R. 280; *Santos and Others v. Republic* (1969) 3 C.L.R. 28; *Miltiadou v. Republic* (1969) 3 C.L.R. 210; *Constantinidou & Others v. Republic* (1974) 3 C.L.R. 416; *Nicolaou and Others v. Republic* (1985) 3 C.L.R. 2471).

20 In the circumstances as the applicant was not qualified under the scheme of service for the post in question she does not possess a legitimate interest to challenge the promotion of the interested parties. The present recourse, therefore fails and is accordingly dismissed.

Let there be no order as to its costs.

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