

1987 October 10

{PIKIS, J}

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ALECOS PAPAIOANNOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondents.

(Case No. 250/86).

Public Officers — Promotions — Head of Department — Whether entitled to make recommendations, if he had chaired the Departmental Committee — Question answered in the affirmative — The Public Service Law 33/67, sections 36 and 44(3).

Public Officers — Promotions — Striking superiority — Meaning of.

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Public Officers — Promotions — Seniority — Weight.

The applicant impugns the validity of the promotion of the interested parties to the post of Administrative Officer, Grade «A».

The applicant is senior to the interested parties, who, however, are superior in merit and qualifications and, moreover, were recommended by the Head of the Department.

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One of applicant's complaints is that the Head of the Department was not entitled to impart his views to the respondent Commission, because he had chaired the Departmental Committee, which made the initial evaluation of the work of the candidates.

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Held, *dismissing the recourse*: Neither section 36 of the Public Service Law (33/67) regulating the establishment and composition of departmental committees nor section 44 sub-section 3 of the same law empowering the head of a department to make recommendations for those to be selected or the regulations governing the functioning of departmental committees make the two capacities mutually exclusive.

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(2) The applicant failed to establish a case of striking superiority. For superior to qualify as striking it must emerge on a consideration of all factors reflecting the suitability of the candidates for appointment. The factor seniority is not of itself a factor establishing striking superiority in this context.

5 (3) The sub-judice selection was reasonably open to the Commission.

Recourse dismissed

Cases referred to

Sotenadou and Others v. Republic (1983) 3 C.L.R. 921;

Elia v. Republic (1985) 3 C.L.R. 38,

10 *Hadji Savva v. Republic* (1982) 3 C.L.R. 76,

Hadji Ioannou v. Republic (1983) 3 C.L.R. 1041,

Kramvis and Others v. P.S.C. (1986) 3 C.L.R. 1243,

Spanos v. Republic (1985) 3 C.L.R. 1826;

Makrides v. Republic (1983) 3 C.L.R. 622.

15 **Recourse.**

Recourse against the decision of the respondent to promote the interested parties to the post of Administrative Officer 1st Grade in preference and instead of the applicant.

Chr. Kitromelides, for the applicant.

20 *A. Vassiliades*, for the respondent.

Interested party C. Makrides, present.

Cur. adv. vult.

PIKIS J. read the following judgment. The applicant and many other Administrative Officers 2nd Grade were candidates for the promotion post of Administrative Officer 1st Grade in the Department of Personnel. He was one of 16 (sixteen) candidates recommended by the departmental committee, set up to make the initial screening of the candidates, as qualified and suitable for appointment. Before addressing themselves to the task of evaluating the rival merits of the candidates the Public Service Commission heard the views of Mr. Kofteros, the head of the department, on the suitability of the various candidates and his recommendations as to those best suited to be selected.

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Perusal of the minutes of the proceedings persuades that respondents made detailed reference to the data bearing on the candidates tabulating in the process their rating in the confidential reports; no doubt in recognition of the significance of that source of information on their suitability for appointment and devotion to duty. At the end of the process they appointed, on a consideration of the factual material before them and the statutory* criteria for promotion (merit, qualifications, seniority), the four interested parties.

Applicant challenges the decision on two grounds the one substantive and the other formal. First it is contended that respondents exercised their discretion in a defective manner in that whereas he had on an overall assessment of the material before them a better claim to be promoted than the interested parties the latter were chosen in preference to him. Thus the decision is bad for misconception of facts and abuse of the discretionary powers vested in the respondents. The second ground is founded on failure on the part of the respondents to appreciate that it was incompetent for Mr. Kofteros to impart his views as Head of the Department on account of the fact that he chaired the departmental committee that made the initial evaluation of the work of the candidates. We may conveniently dispose of this ground before examining allegations of excess and abuse of power on the part of the appointing body. Neither Section 36 of the Public Service Law (33/67) regulating the establishment and composition of departmental committees nor Section 44 sub-section 3 of the same law empowering that head of a department to make recommendations for those to be selected or the regulations governing the functioning of departmental committees** make the two capacities mutually exclusive. There is no reason in principle that it should be so either considering that the aim in both cases is to apprise the Public Service Commission of the suitability of the candidates for promotion. This reality has been judicially acknowledged*** and nothing said in this case persuades me to adopt a contrary position.

In argument before me counsel felt constrained to acknowledge the case for his client falls short of establishing a case of striking

* Section 44(2) - Law 33/67.

** Regulations governing the establishment and composition of departmental committees - came into force on the 1st June, 1979.

*** *Soteriadou and Others v. Republic* (1983) 3 C.L.R. 921, (reversed on appeal but on a different point). *Elia v. Republic* (1985) 3 C.L.R. 38.

superiority over those appointed in preference to him.* For superiority to qualify as striking it must emerge on a consideration of all factors reflecting the suitability of the candidates for appointment notably merit, qualifications and seniority.** The

5 one factor in respect of which the applicant enjoyed definite superiority over the interested parties was his seniority but that is not of itself a factor establishing superiority in this context as observed in *Loucaides v. P.S.C.* (1986) 3 C.L.R. 182. Reflection

10 on the confidential reports on the parties on the other hand, does reveal the performance of the interested parties at work was better with a corresponding impact on the definition of the «merits» of the parties. From the view point of academic qualifications the interested parties fared better and on that account too they could be considered as superior to the applicant. No less importantly the

15 interested parties had the recommendation of the head of the department, a factor distinct in itself in shaping legitimate expectations of the candidates to promotion.***

In making their selection the respondents do not appear to have overlooked any material aspect of the case, factual or legal.

20 Applicant's seniority over other candidates was specifically noticed in the minutes of the Commission and notwithstanding the absence of a recommendation by the head of the department for the applicant he was nonetheless for the reasons stated in the minutes considered for the filling of the fourth post. Ultimately

25 they did not choose the applicant. It was reasonably open to the respondents to act that way in the exercise of their discretion. Nothing said before me justifies interference with that decision. Consequently the recourse is dismissed and I order accordingly.

Recourse dismissed.

* *Hadjisavva v. Republic* (1982) 3 C.L.R. 76. *Hadjiloannou v. Republic* (1983) 3 C.L.R. 1041. *Kramvis and Others v. P.S.C.* (1986) 3 C.L.R. 1243.

** *Spanos v. Republic* (1985) 3 C.L.R. 1826.

*** See *inter alia Makrides v. Republic* (1983) 3 C.L.R. 622.