

1987 December 30

(KOURRIS, J.)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MILTIADES MILTIADOUS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 153/87).

Public Officers — Promotions — Qualifications — Decision 12655 of the Council of Ministers — «Treated service», i.e. recognition of a post-graduate diploma or title or post graduate education by a public officer as service or experience — As the case involves the construction of a legal document, the issue is not whether the interpretation given to it by the appointing organ was reasonably open to it or not, but whether such interpretation is correct or not — In the true construction of the decision «treated service» can be used by an Officer at any stage of his career provided he uses it only once.

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By means of this recourse the applicant impugns the validity of the promotion of the interested parties to the post of Assistant Collector of Customs as well as the validity of the decision that the applicant was not an eligible candidate.

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The only issue that arises for determination is whether the applicant was qualified under the scheme of service and Decision 12655 of the Council of Ministers for promotion to the sub judge post.

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The outcome depends on whether the period which the applicant spent abroad to acquire his post-graduate diploma, which is known as «treated service» («plasmatici ipiresia»), should be treated as service to the post held by the officer during the time spent for the relevant studies, i.e., in the present case as Customs Officer, 2nd Grade, or if not used as such, whether it could be treated as service to any other higher post subsequently held by the officer, i.e. in the present case, as Customs Officer, 1st Grade.

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Counsel for applicant argued in favour of the latter view, whereas counsel for the respondent Commission has taken the former view.

5 Held, annulling the sub judice decision (1) The present case is not a case where the Public Service Commission had to fit certain facts into the scheme of service so that the test is whether the interpretation adopted by it was reasonably open to it. It is a legal construction of a document and if the Public Service Commission erred in interpreting it, the Court can intervene and give the correct interpretation.

(2) The true construction to be placed on the said circular is that the «treated service» can be used by a public officer at any stage of his career provided he uses this «treated service» once only.

10 *Sub judice decision annulled*
No order as to costs

Cases referred to

Papapetrou v The Republic, 2 R.S.C. C 61,

Frangoulides v The Public Service Commission (1985) 3 C.L.R. 1680,

15 *Der Parthouh v The Republic* (1985) 3 C.L.R. 635,

Avaliots v The Republic (1971) 3 C.L.R. 71

Recourse.

20 Recourse against the decision of the respondent to promote the interested parties to the post of Assistant Collector of Customs and against the decision whereby the applicant was not considered as eligible for promotion to the above post.

G Trantafyllides, for the applicant

L Koursoumba (Mrs), for the respondent

Cur adv vult

25 KOURRIS J read the following judgment. By the present recourse the plaintiff claims the following:

30 (a) The decision and/or act of the Public Service Commission to promote the interested parties to the post of Assistant Collector of Customs as from 1.1 1987 which was published in the Official Gazette of the Republic on 20.2.1987, is null and void, and

(b) The decision of the Public Service Commission which was communicated to the applicant on 19.1.1987 by which he was notified that he was not eligible for promotion to the post of Assistant Collector of Customs, because at the material time he did not satisfy the relevant provisions of the scheme of service.

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requiring 3 years service in the post of Customs and Excise Officer. 1st Grade. is null and void.

The interested parties are the following:-

1. Georghiou S. Papadakis,
2. Andreas Ch. Loizides, 5
3. Costakis Christoforou,
4. Ioannis N. Papaioannou,
5. Artemis Theofylou,
6. Prodromos Michael.

At the time of the sub judice decision, the applicant and the interested parties were holding the post of Customs and Excise Officer, 1st Grade. 10

Pursuant to a request made by the Director-General of the Minister of Finance to the respondent Commission for the filling of six vacancies in the post of Assistant Collector of Customs, which is a promotion post, the respondent Commission referred the matter to the departmental committee which was set up for the purpose in accordance with the provisions of s. 36 of the Public Service Law, 1967 (Law 33/67). 15

By its report, which was submitted to the respondent by letter dated 4.7.1986, the departmental committee recommended 18 candidates for promotion to the post in question including the interested parties and the applicant. 20

At the meeting of 5th August, 1986, the respondent Commission considered the report of the departmental committee and having found that four of the candidates, including the applicant, recommended by it, possessed the qualifications for three years service in the post of Customs and Excise Officer, 1st Grade, provided that the years they spent for post-graduate education abroad during their service would be considered as years for service in the post of Customs and Excise Officer, 1st Grade, decided that the matter required further consideration 25 30

The Chairman of the respondent Commission by letters dated 25.10.1986, 29.10.1986 and 8.12.1986, asked for a legal opinion from the Office of the Attorney-General regarding the interpretation of the decision of the Council of Ministers No. 12655 on the subject of «recognition of a postgraduate diploma or 35

title or education or post-graduate education by a public officer as service or experience», which he received on 9.12.1986. (Appendix 10 to the Opposition.)

5 The final meeting of the respondent Commission took place on 15.12.1986, whereby they continued the examination of the report of the departmental committee in the light of the legal opinion from the office of the Attorney-General. During this meeting, the respondent Commission also examined the claim of the applicant contained in his letters dated 3.5.1986, 28.6.1986
10 and 12.12.1986 that the period spent abroad in order to acquire his post graduate diploma should be considered as service in the post of Customs and Excise Officer, 1st Grade, but they rejected his claim also in the light of the said legal opinion that this period should be considered as service in the post of Customs and Excise
15 Officer 2nd Grade only.

In view of the above, the Respondent Commission decided that the applicant as well as another three candidates were not eligible for promotion as they did not possess the required qualifications of the scheme of service. (Appendix 11 to the Opposition.)

20 Learned counsel for the applicant, has confined himself to the issue of the eligibility of the applicant for promotion to the post of Assistant Collector of Customs under the relevant scheme of service and the circular of the Council of Ministers, so the only issue that falls for determination is the interpretation of the scheme
25 of service in conjunction with the circular of the Council of Ministers.

If the applicant is eligible, the sub judice decision must be annulled for misconception of material facts, i.e. the facts relevant to the eligibility of the applicant for promotion and the wrong
30 interpretation of the relevant provisions of the circular of the Council of Ministers.

The issue which is in dispute is whether the period which the applicant spent abroad to acquire his post-graduate diploma, which is known as «treated service» («plasmatici ipiresia»), should
35 be treated as service to the post held by the officer during the time spent for the relevant studies, i.e., in the present case as Customs Officer, 2nd Grade, or if not used as such, whether it could be treated as service to any other higher post subsequently held by the officer, i.e. in the present case, as Customs Officer, 1st Grade.

Learned counsel for the applicant argued in favour of the latter view, whereas counsel for the respondent Commission has taken the former view.

It is pertinent at this stage to set out, so far as relevant for the purposes of this case, the Decision of the Council of Ministers, No. 12655:-

«Αναγνώρισις μεταπτυχιακού διπλώματος ή τίτλου και εκπαιδεύσεως ή μετεκπαιδεύσεως δημοσίου υπαλλήλου ως υπηρεσίας ή πείρας

Διά σκοπούς Σχεδίων Υπηρεσίας θέσεων διά τας οποίας απαιτείται ωρισμένη υπηρεσία ή πείρα- 10

Μεταπτυχιακόν δίπλωμα ή τίτλος αποκτηθείς κατόπιν μελέτης εις το εξωτερικόν είτε υπό δημοσίου υπαλλήλου κατά την διάρκειαν της υπηρεσίας του είτε υπό προσώπου τινός προ του διορισμού εις την δημοσίαν υπηρεσίαν, και 15

(α) μη συνιστών απαραίτητον προσόν διά την θέσιν, δέον να λογίζεται, βάσει του κανονικώς απαιτουμένου χρόνου διά την απόκτησιν αυτού, ως υπηρεσία ή πείρα μέχρι δύο ετών, κατ' ανώτατον όριον, και 20

(β) συνιστών απαραίτητον προσόν διά την θέσιν μη λογίζεται ως υπηρεσία ή πείρα πλην της περιπτώσεως κατοχής τίτλου Διδάκτορος (Ph.D.) διά την οποίαν θα λογίζεται ως εν έτος υπηρεσίας ή πείρας:

Νοείται ότι τοιούτο δίπλωμα ή τίτλος δέον όπως μη λογίζεται ως υπηρεσία ή πείρα εάν δεν είναι συναφής προς τα καθήκοντα της θέσεως. Η ως άνω υπηρεσία ή πείρα θα αναγνωρίζεται άπαξ μόνον και θα ευρίσκεται εις πίστιν του υπαλλήλου κατά την διάρκειαν της υπηρεσίας του.» 25 30

In English it may be translated as follows:

«For the purposes of Schemes of Service of a post in which certain service or experience is required-

A post graduate diploma or title acquired after studies abroad either by a public officer during his service or by any person prior to his appointment to the public service, and 35

(a) not constituting a necessary qualification for the post, shall be reckoned, on the basis of the time normally required for its acquisition, as service or experience up to *two years*, maximum; and

5 (b) constituting a necessary qualification for the post shall not be reckoned as service or experience except in the case of possession of the title of Doctor of Philosophy (Ph.D.) which shall be reckoned as *one year's* service or experience:

10 Provided that such diploma or title shall not be reckoned as service or experience if it is not related to the duties of the post. The aforesaid service or experience shall be recognised *once only* and shall be to the credit of the officer during his service:»

15 Counsel for the applicant argued that the postgraduate diploma should be credited to a public officer and made use of once only at any time he wishes, and stressed that this is clear that one is permitted to make use of this diploma even if it has been obtained before entering the public service. He said that by definition when you acquire a post-graduate diploma before entering the public service, which is expressly permitted by the circular, you cannot
20 use it for your first appointment in the public service because when you are first appointed no scheme of service requires previous experience or service, simply because you have not been in the service before. Therefore, he went on to say that when you acquire a diploma before entering the civil service, you will
25 necessarily use it in accordance with the provisions of the circular for a promotion to a post at which you did not acquire this post-graduate degree or diploma. He suggested that from the wording of the circular, no restriction is attached to the use of the post-graduate diploma

30 He went on to say that in the present case we are concerned with legal interpretation and the Court may intervene and interpret the phrase and, if the interpretation given by the Public Service Commission to such a phrase or word is not the correct one, then the Court can intervene because in law there can only
35 be one correct interpretation; and it is absurd to say that the Public Service Commission can give any legal interpretation and then the Court cannot intervene because *such* interpretation is within the discretion of the Public Service Commission.

Learned counsel for the respondent argued that the true issue is whether the interpretation adopted by the respondent was reasonably open to it and that it is upon the applicant to discharge the onus, which is cast upon him, and showing that the Public Service Commission has applied the scheme of service in a manner that was not reasonably open to it. She went on to say that the interpretation adopted by the Public Service Commission need not necessarily be the most obvious one or indeed the one favoured by the Court, and the test is whether it transgresses the limit set by the wording of the law. In support she cited the cases of *Papapetrou v. The Republic*, 2 R.S.C.C. 61 at p 69; *Frangoullides and Another v. The Public Service Commission*, (1985) 3 C.L.R. 1680 at pp. 1684-1685; *Der Parthough v. The Republic*, (1985) 3 C.L.R. 635 and *Aivaliotis v. The Republic* (1971) 3 C.L.R. 71.

She submitted that the object and the meaning of the Decision of the Council of Ministers as clearly emerges from its wording as a whole, is to treat as period of service or experience, time spent by a person abroad, either before entering the public service or while in the service, in order to further educate himself in matters which are connected with or related to the duties of a certain post; in other words, persons who for that reason either entered the service late or interrupted their actual service should not find themselves at a disadvantage, for the purposes of a scheme of service whereby certain period of service is required, when compared to other officers who had spent that time actually serving. But, she went on to say that it is far from intending and/or meaning to place persons «credited with service» at an advantage over persons who actually served. She invited the Court to accept as a correct interpretation of the Decision of the Council of Ministers that «treated service» («plasmatikí ipiresia»), should be treated as service to the post held by the officer during the time spent for the relevant studies.

I have considered carefully the submissions of learned counsel and I am inclined to accept the argument of learned counsel for the applicant. The said Decision of the Council of Ministers qualifies the scheme of service in question and it is incorporated with it. The present case is not a case where the Public Service Commission had to fit certain facts into the scheme of service so that the test is whether the interpretation adopted by it was reasonably open to it. It is a legal construction of a document and if the Public Service

Commission erred in interpreting it, the Court can intervene and give the correct interpretation.

In my view, the prerequisites for the recognition of a post-graduate diploma by virtue of the circular of the Council of
5 Ministers, are the following:

(a) post-graduate diploma or title acquired after education abroad;

(b) this diploma or title should not constitute a necessary qualification for the post;

10 (c) the diploma or title should relate to the duties of the post; and

(d) the diploma or title should have been acquired after education abroad either by a public servant during his service or by a person before his appointment in the public service.

15 It is obvious from the above that there is no restriction as to the service to be credited to the public officer except that he can use this «treated service» («plasmatici ipiresia») once only.

In conclusion, I think that the true construction to be placed on the said circular is that the «treated service» can be used by a public officer at any stage of his career provided he uses this «treated
20 service» once only.

In view of the above, I think that the applicant was an eligible candidate and consequently the sub judge decision is annulled for misconception of material facts, i.e. the facts relevant to the eligibility of the applicant for promotion, and misinterpretation of
25 the relevant provisions of the circular of the Council of Ministers.

In the exercise of my discretion, I do not make any order as to costs.

*Sub judge decision
annulled. No order
as to costs.*