

1987 November 28

[KOURRIS J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

THRASYVOULOS LIASIDES,

*Applicant,*

v

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent*

*(Case No 557/86)*

*Public Officers — Appointments — The Public Service Law 33/67 section 33(d) — «Good character» — Disciplinary offence committed during coup d' etat, for which applicant was punished with the disciplinary sentence of requirement to resign, and convictions in 1984 for assault occasioning actual bodily harm, public insult and disturbance, correctly taken into account in assessing applicant's character*

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The applicant was appointed on a casual basis on 28 7 1980 to the post Technician 2nd Grade in the Water Development Department The Public Service Commission refused to appoint the applicant to the post of Technician, 2nd Grade, in the Water Development Department in accordance with the provisions of the Casual Public Officers (Appointment to Public Offices) Law, 1985 (160/85)

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In the light of the following facts namely that the applicant during the coup d' etat committed disciplinary offences for which the respondent Commission on 29 6 1979 imposed on the applicant the disciplinary sentence of compulsory retirement from 1 7 1979, and that on 14 5 84 he was convicted by the District Court of Nicosia for assault causing actual bodily harm, public insult and disturbance, the respondent reached the conclusion that the applicant is not of good character and, consequently, refused to appoint him in view of s 33(d) of the Public Service Law 33/67

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Hence this recourse

Counsel for the applicant contended that the issue of «good character» should be examined as at the date of the decision of the Commission or at

least as at the time of the request for the filling of the post, and this by applying by analogy the ratio decidendi of the case *Republic v Katenna Pencleous* (1984) 3 C L R 577 that there has not been a due inquiry, because the applicant was not called upon to appear before the Commission, that a report which was prepared in 1983 by Andreas Evrypidou, the Senior Technical Superintendent in the Water Development Department with regard to the applicant and the other employees serving on a casual basis was not forwarded for the consideration of the respondent Commission, and that the respondent Commission acted contrary to the Law, and particularly contrary to s 35(1) of Law 33/67 in that it failed to ask for the advice of the Advisory Board

Held dismissing the recourse (1) The Public Service Commission in assessing the character of the applicant rightly took into consideration the disciplinary sentence of compulsory retirement which took place 12 years prior to the date of the sub judice decision and the conviction for the criminal offence which took place almost 3 years prior to the decision, because these two offences reflect on the character of the applicant

(2) The Public Service Commission could not have taken into consideration the character of the accused for the last 3 years prior to the decision and ignored his character for the years before that

(3) The applicant was given every opportunity to supply the respondent Commission with all material regarding his character

(4) The report for 1983 was prepared on the instructions of the Director of Water Development Department for his own use and for one year only

(5) This case concerns appointments under the Casual Public Officers (Appointment to Public Offices) Law 1985, (160/85), where there is no provision for advisory boards

*Recourse dismissed*  
*No order as to costs*

3.) *Cases referred to*

*Republic v Pencleous*, 3 C L R 577,

*Stavndes v Republic* (1985) 3 C L R 95

**Recourse.**

35 Recourse against the refusal of the respondent to appoint applicant to the post of Technician, 2nd Grade, in the Water Development Department in accordance with the provisions of

the Casual Public Officers (Appointment to Public Offices) Law, 1985, (Law No. 160/85).

*N. Papaefstathiou*, for the applicant.

*A. Papisavvas*, Senior Counsel of the Republic, for the respondent.

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*Cur. adv. vult.*

KOURRIS J. read the following judgment. Applicant by this recourse challenges the validity of the act and/or decision of the Public Service Commission dated 11.7.1986 whereby the Commission refused to appoint the applicant to the post of Technician, 2nd Grade, in the Water Development Department in accordance with the provisions of the Casual Public Officers (Appointment to Public Offices) Law, 1985 (160/85).

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The applicant was appointed on a casual basis on 28.7.1980 to the post of the Water Development Department.

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In accordance with the provisions of the Casual Public Officers (Appointment to Public Offices) Law, 1985 (160/85) the Director of Public Administration and Personnel Service forwarded to the respondent Commission a list of appointees which was prepared by him in accordance with s. 3 of the Law including the name of the applicant for the appointment to the post of Technician, 2nd Grade, Water Development Department.

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The office of the Public Service Commission by a letter dated 21.11.1985 forwarded to the Director of the Water Development Department Forms (Gen. 6) to be completed by the interested Casual Employees.

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The Director of the Water Development Department by his letter dated 3.1.86 forwarded to the office of the Public Service Commission the said forms duly completed by the interested Employees.

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The Public Service Commission during its meeting on 19.5.1985, when considering the name of the applicant observed that during the coup d'etat he has committed disciplinary offences for which the respondent Commission on 29.6.1979 imposed on the applicant the disciplinary sentence of compulsory retirement from 1.7.1979, (Appendix 4). They also observed that during his service as a casual employee in the Water Development

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Department he was convicted by the District Court of Nicosia on 14 5 84 for £40 fine and he was also bound over for £100.- for one year for the offences of assault causing actual bodily harm, public insult and disturbance (Appendix 5). Finally they observed that the applicant who completed Form Gen. 6 failed to mention the hereinabove.

The respondent Commission asked for advice from the Office of the Attorney-General and on 9.5.1986 received a legal opinion to the effect that the criminal offences for which the applicant was convicted, do not involve dishonesty or moral turpitude and that the term «dismissal» in s. 33(f) do not cover also compulsory retirement. It was also mentioned that no person is appointed to the Public Service unless he is of good character and this is a factual aspect which falls within the exclusive jurisdiction of the Public Service Commission which has to exercise its discretion on the matter (Appendix 6).

In view of the above, the respondent Commission decided to ask the applicant to submit in writing whatever explanations he wished regarding his character and they also decided to ask the Director of the Water Development Department for explanations as to the mode of the appointment of the applicant as a casual employee; for this purpose the Office of the Public Service Commission by letter dated 26.5.86 asked the applicant to submit in writing whatever explanations he wished because under the provisions of s. 33(d) of the Public Service Law 1967 no person is appointed to the Public Service if he is not of good character (Appendix 8).

The Law Office of Messrs. Tasos Papadopoulos and Co. acting on behalf of the applicant addressed a letter dated 5.7.1986 and submitted the representations of the applicant which are mainly of a legal nature (Appendix 11).

The Director of the Water Development Department in reply to a letter addressed to him by the Public Service Commission dated 26.5.1986 (Appendix 9) referred to the process of the appointment of the applicant as a casual technician and mentioned that he was not aware of his previous service as a warden and of his compulsory retirement (Appendix 10).

The Public Service Commission during its meeting on 11.7.1986 considered the letter of counsel of the applicant as well

as the letter of the Director of the Water Development Department and having taken into account the nature of the disciplinary offence for which the applicant was sentenced to compulsory retirement from the Public Service as from 1.7.1979 as well as the nature of the criminal offences for which he was convicted on 14.5.1981, were of the view that the applicant was not a person of good character within the ambit of the provisions of s. 33 of the Public Service Law, 1967 and decided that he could not be appointed to the said post (Appendix 12).

The Office of the Public Service Commission informed in writing counsel of the applicant and the Director of the Water Development Department of their decision (Appendix 14).

Applicant, feeling aggrieved, filed the present recourse and he alleged that the sub judice decision was taken under a misconception of facts and law, that there has been no due inquiry, and that the respondent commission exercised its discretion in a defective manner.

Counsel for the applicant in his written address alleged that the qualifications for appointment which are required under s. 33 of the Public Service Law 1967 (Law 33/67), and in the instant case the «good character» of the applicant, must exist at the date of the decision of the Commission or at least at the time of the request for the filling of the post, and this by applying by analogy the ratio decidendi of the case *Republic v. Katerina Pericleous*, (1984) 3 C.L.R. 577. Pausing here for a moment, with respect to counsel for the applicant, the ratio decidendi of the «Pericleous» case is that the first material date at which a candidate must possess the required qualifications in the case of a first entry and first entry and promotion post, is the last date of the period prescribed in the advertisement for the vacancy by which applications have to be submitted; and in respect of promotion posts only, where no applications are made, inevitably it is the date on which the request for the filling of a vacancy under s. 17 of the Public Service Law, 1967, is received by the Commission.

Be that as it may, he contended that the respondent Commission considered as the material date whether the applicant is of «good character» neither the date of the request for filling the post, nor the date of the relevant decision. He went on to say that the respondent Commission wrongly took into consideration the disciplinary sentence of compulsory retirement

which took place 12 years prior to the date of the sub judge decision and the conviction of the criminal offence which took place almost 3 years prior to the decision, and he submitted that the respondent Commission acted under a misconception of fact when they relied on the said two convictions in deciding whether applicant is of «good character» or not, in as much as there was a legal opinion from the Office of the Attorney-General that the said offences did not involve dishonesty or moral turpitude, and cited the case of *Stavrides v. Republic*, (1985) 3 C.L.R. 95.

10 *The facts of the case of Stavrides differ from the facts of the present case and also the point in issue in the Stavrides case was different from the point in issue in the case in hand, and consequently, does not help us. I am of the view that the Public Service Commission in assessing the character of the accused*  
15 *rightly took into consideration the disciplinary sentence of compulsory retirement which took place 12 years prior to the date of the sub judge decision and the conviction of the criminal offence which took place almost 3 years prior to the decision, because these two offences reflect on the character of the applicant. A person who is appointed as a public officer should be of such a character as to be trusted by the State and to be loyal to the State. Bearing in mind the nature of the disciplinary offence of the applicant, I think that the applicant lacked the character so as to be trusted by the State. The Public Service Commission could not have taken into consideration the character of the accused for the last 3 years prior to the decision and ignored his character for the years before that.*

In the circumstances, it was reasonably open for the Public Service Commission to reach the decision that the applicant  
30 lacked the qualification under s. 33(d) of the Public Service Law, 1967 (Law 33/67).

With regard to the allegation that the decision lacked due inquiry, counsel alleged that the respondent Commission failed to ask the applicant to attend before them and make inquiries as to his character, although his advocates in their letter to the respondent Commission, appendix 13, stated that applicant was available for the respondent Commission to give any explanations they might require. He also contended that the respondent Commission failed to examine on the date of the decision,  
40 whether there were facts which could differentiate the position

existing as at 14.5.1984 when applicant was convicted by the District Court of Nicosia, i.e. they failed to make inquiries as to the character of applicant from 14.5.1984 till the date of their decision which was on 11.7.1986.

Counsel for the applicant called Andreas Evrypidou, who is the Senior Technical Superintendent in the Water Development Department who testified that in 1983 he prepared reports for 30 employees, including applicant, who were serving on a casual basis in the department. He did so on the directions of the Director of the Department. He also testified that he was of the opinion that the applicant was of excellent character and when asked what his opinion would have been had he known that the applicant had two convictions, his reply was that his opinion would have been the same because he would have confined his opinion to the behaviour of the applicant at the office.

The applicant cannot complain that the respondent Commission failed to make an inquiry as to his character because he was given every opportunity to supply the respondent Commission with all material regarding his character. This is apparent from the letter which is Appendix 8. The applicant instead of supplying the respondent Commission with material regarding his character, chose to instruct counsel who addressed a letter to the respondent Commission and submitted the representations of the applicant which are mainly of a legal nature (see appendix 11). The applicant is to blame for his failure to supply the respondent Commission with any material he wished with regard to his character. The evidence which the applicant adduced during the hearing ought to have been placed before the Authority which took the decision. But, bearing in mind the nature of the evidence adduced, I do not think that would add anything for the benefit of the applicant because it is the opinion of his superior in the Water Development Department and confined his opinion as to the behaviour of the applicant in the office. When he was asked what his opinion would have been if he had known of the offences of the applicant, his reply was that he would have been of the same opinion because he would not have taken into consideration the offences of the applicant and that he would have confined his opinion as to the character of the applicant with regard to his behaviour in the office.

- There has been much dispute about a report which was prepared in 1983 by Andreas Evrypidou, the Senior Technical Superintendent in the Water Development Department with regard to the applicant and the other employees serving on a casual basis and which was not forwarded for the consideration of the respondent Commission. It has been established beyond doubt that this report was prepared on the instructions of Lytras, the Director of the Water Development Department for his own use and for one year only. According to the evidence of Gavriel Demosthenous who is the Senior Clerical Officer and in charge of the Registry of the Department, he kept the report in the office because there was no law or circular entitling him to forward it either to the Personnel Department or place it in the personal file of the applicant.
- In view of the above, I am of the opinion that the respondent Commission carried out a thorough inquiry into the circumstances of this case before taking the sub judice decision.

Lastly, counsel for the applicant contended that the respondent Commission acting contrary to the law, and particularly contrary to s 35(1) of the law, failed to ask for the advice of the Advisory Board. It should be noted that the appointments to the post of Technician, Second Grade, in the Water Development Department was, in accordance with the provisions of the Casual Public Officers (Appointment to Public Offices) Law 1985, (160/85), where there is no provision for advisory boards. Consequently, also this point fails.

In view of the above, I am of the opinion that it was reasonably open for the Public Service Commission to reach the decision which they did, and the recourse fails and is dismissed with no order for costs.

*Recourse dismissed.  
No order as to costs.*