

1987 January 24

[DEMETRIADES, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS MYTIDES,

Applicant,

v

THE REPUBLIC OF CYPRUS THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondents

(Case No 47/84)

Public Officers—Promotions—Qualifications—Scheme of service—Application and interpretation of—Judicial control—Principles applicable

5 *Public Officers—Promotions—Qualifications—Director-General of Ministry supplying the Commission with information he received as regards a candidate's qualification and conveying conclusion of Ministry in respect of such qualification—Supply of information not contrary to the principles of good and proper administration, but the transmission of the Ministry's views is, to say the least, highly undesirable*

10 *Public Officers—Promotions—Striking superintendency—Ment—Last two reports on applicant better than those on interested party—In the circumstances this fact not by itself sufficient to establish striking superintendency of applicant*

15 *Attorney-General—Advice of, as to whether material before the appointing organ concerning a qualification of a candidate for promotion in the public service satisfy a requirement of scheme of service—In the circumstances such advice did not amount to interference with the discretion of such organ*

20 *Judgments—Revisional Jurisdiction—Annuling decision—Finding by trial Judge that interested party satisfied a particular requirement of the scheme of service—Reconsideration of the matter and promotion of the same person to the post in question—New recourse—This Court will not act as an appellate Court and question the previous finding*

25 The promotion of the interested party to the post of Head, Prices Control and Consumers' Protection Service, in the Ministry of Commerce and Industry, was annulled by this Court on the ground that the respondents did not carry out a due inquiry as to whether the interested party possessed the qualifications required by the relevant scheme of service and as to whether the interested party's degree of Bachelor of Business Administration satisfied the

requirement of a degree or title in Economics or Commerce, required by the said scheme of service. The Court, however, found that it was open to the Commission to find that the interested party satisfied the requirement under para. 6 of the scheme of service.

As a result of the said annulling decision the respondents reconsidered the matter and conducted inquiries into the nature of the degree held by the interested party by addressing relevant questions to the American University of Beirut (which awarded the said degree), to the Fulbright Commission and to the British Council. The American University of Beirut did not reply. The Fulbright Commission replied that in USA the said degree is used interchangeably with a degree in Commerce and the British Council replied that the two degrees are similar as they have the same aims. 5
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The Director-General of the Ministry of Commerce and Industry conducted his own inquiries into the matter and forwarded to the Commission the following material, namely a telex from the American University of Beirut to the effect that the degree is considered as a degree in Commerce, an analysis of the subjects followed by the interested party for the purpose of obtaining his degree and material received from the Greek Embassy in Nicosia. The Director, however, did not stop at that but proceeded and informed the Commission that the Ministry after careful study, arrived at the conclusion that the degree can be treated as equivalent to a degree in Commerce. 15
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It should, also, be noted that the Commission received, through counsel of the applicant, a letter from the University of Oxford to the effect that the three subjects (Economics, Commerce, Business Administration) are considered as entirely separate. 25

When all the above material were gathered before it, the Commission sought and obtained the advice of the Attorney-General on the matter. In accordance with such advice the degree in question could be considered as a title in Commerce.

On the 11.1.84 the respondents found that «in the light of all the material before them, as well as the advice of the Attorney-General» the degree could be considered as one in Commerce. The respondents then, having been satisfied that the interested party possessed the remaining qualifications under paras. 2 and 3 of the scheme of service, decided to promote the interested party to the said post. 30
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Hence the present recourse.

Held, dismissing the recourse: (1) This Court does not interfere with the discretion of the appointing organ in interpreting and applying a scheme of service, unless it was not reasonably open to it to reach the relevant decision.

(2) In the light of the said annulling decision of this Court it was open to the 40

Commission to conduct a new inquiry into the matter of the qualifications of the interested party.

5 (3) The Director-General of the Ministry had a duty to supply the Commission with the information he had received as regards the matter of the degree and, therefore, his action in that respect was not contrary to the principles of good and proper administration. However, the step he took to convey to the Commission the conclusions reached by the Ministry as regards the degree is, to say the least, highly undesirable, but in the light of the material before the Court there is no indication that the Commission relied on such conclusions and, therefore, there was no interference with its discretion.

10 (4) The advice of the Attorney-General was not such as to amount to an interference with the respondents' discretion.

15 (5) In the light of the said annulling decision of this Court it was open to the Commission to find that the requirement under para.6 of the scheme of service was satisfied and this Court cannot act as an appellate Court and question the finding of the Judge in that case.

(5) On the basis of the material before it, it was reasonably open to the Commission to reach the conclusion that the interested party satisfied the requirements under paras.2 and 3 of the scheme of service.

20 (6) The fact that the last two reports on the applicant are better than those of the interested party is not by itself sufficient to establish striking superiority of applicant over the interested party.

*Recourse dismissed.
Costs against applicant.*

25 *Cases referred to:*

Papapetrou v. The Republic, 2 R.S.C.C. 61;
Mytides v. The Republic (1983) 3 C.L.R. 1096;
Constantinides v. The Republic (1984) 3 C.L.R. 643.

Recourse.

30 Recourse against the decision of the respondents to promote the interested party to the post of Head, Prices Control and Consumers' Protection Service in the Ministry of Commerce and Industry in preference and instead of the applicant.

35 A.S. Agnelides, for the applicant.
A. Vladimirov, for the respondents.
G. Triantafyllides, for the interested party.

Cur. adv. vult.

DEMETRIADES J. read the following judgment. This recourse directed against the decision of the respondents dated the 11th January, 1984, to appoint and/or promote to the post of Head, Prices Control and Consumers' Protection Service, in the Ministry of Commerce and Industry, Mr. Costas G. Paschalis, the interested party, instead of and in preference to the applicant. 5

On the 1st April, 1982, the interested party was promoted to the post of Head, Prices Control and Consumers' Protection Service, in the Ministry of Commerce and Industry, by a relevant decision of the respondents and as a result the applicant, together with another candidate, challenged the above decision by Recourses Nos. 6/82 and 290/82. By the judgment in the above recourses, which was delivered on the 19th October, 1983, (see *Mytides and another v. the Republic*, (1983) 3 C.L.R. 1096), the promotion of the interested party was annulled on the ground that no due inquiry was carried out by the respondents as to whether the interested party possessed the qualifications required by the schemes of service and that the Commission did not conduct any inquiry in order to ascertain whether the degree of Bachelor of Business Administration, held by the interested party, satisfied the requirement of a degree or title in Economics or Commerce, as provided in the schemes of service for the post in question. 10 15 20

After the annulment of the promotion of the interested party, the respondents met to consider the position in the light of the judgment of the Court and decided to conduct further inquiries in the nature of the academic degree held by the interested party. In this respect, the respondents addressed a letter to the American University of Beirut (which awarded the degree of the interested party), requesting advice as to whether the degree of Business Administration awarded by it is considered as a degree in Commerce. Also, also, addressed a second letter to the Fulbright Commission, inquiring whether the degree of Bachelor of Business Administration, awarded by Universities in the United States, is treated in the U.S.A. as a degree in Commerce. A third letter was sent to the British Council inquiring whether the same degree is regarded in the United Kingdom as a degree in Commerce. 25 30 35

By letter dated the 23rd November, 1983, the British Council informed the respondents that although different Universities may offer similar courses under different titles and give different titles to

their degrees, the two degrees are similar in the sense that they have the same aims.

The Fulbright Commission, by its letters dated the 30th November, 1983 and the 13th December, 1983, informed the respondents that the degree of Bachelor of Business Administration is, in the U.S.A., used interchangeably as a degree in Commerce and that the courses in Business Administration are related to commercial subjects.

The American University of Beirut did not reply to the letter of the respondents.

Parallel to the inquiry carried out by the respondents on this matter, the Director-General of the Ministry of Commerce and Industry, conducted his own inquiries and forwarded to the respondents a telex which he received from the above University to the effect that the subjects covered by the degree in Business Administration deal with Commerce and the degree is, therefore considered to be a degree in commerce. The same official, also forwarded to the respondents material from the Greek Embassy in Cyprus, showing that the School of Economic and Commercial Sciences in Greece provides courses in (a) Economics and (b) Business Administration and awards degrees in Commerce to its graduates. He, also, forwarded to the respondents an analysis of the subjects followed by the interested party for the purpose of obtaining his degree, pointing out that the Ministry, after careful study of the subjects taught, arrived at the conclusion that the degree in question is directly related to the commercial subject and that the degree can be considered as an equivalent degree in Commerce (see letter dated the 22nd November, 1983, appendix 9 to the Opposition).

On the 26th November, 1983, counsel for the applicant wrote to the respondents on this matter and forwarded to them a letter dated the 22nd November, 1983, from the University of Oxford the material part of which reads:

«This University does award degrees in Economics but not in Commerce or Business Administration; and would consider the three subjects to be *entirely separate*, although interrelated.»

At their meeting of the 10th December, 1983, the respondents decided to seek the advice of the Office of the Attorney-General on certain matters. On the 7th January, 1984, the respondents wrote to the Attorney-General's Office and asked for advice, inter alia, as to whether the degree of the interested party can be considered as a title in Commerce. The relevant part of the letter reads as follows (appendix 17 to the Opposition):

«3. Θα πρέπει να σημειωθεί ότι η Επιτροπή για σκοπούς επανεξέτασης του θέματος συγκέντρωσε διάφορα στοιχεία. Αυτά, καθώς και δυο σχετικές επιστολές από το δικηγόρο του Αιτητή στην προσφυγή αρ. 226/82, που στάληκαν μετά την έκδοση της απόφασης του Δικαστηρίου ημερ. 9.11.83 και 26.11.83, επισυνάπτονται ως Παραρτήματα Α & ΣΤ, προκειμένου να συμβουλευσете κατά πόσον από νομικής πλευράς θα ήταν δικαιολογημένο να θεωρηθεί το πανεπιστημιακό πτυχίο του κ. Πασχάλη στη Διοίκηση Επιχειρήσεων (Β.Α., Business Administration) ως πανεπιστημιακός τίτλος στα Εμπορικ.ά.»

(«3. It has to be noted that the Commission, for purposes of re-examination of the matter, collected certain material. These, together with two relevant letters from counsel for the applicant in Recourse No. 226/82, which were sent after the delivery of the judgment of the court (dated 9.11.83 and 26.11.83) are attached as Appendices A - ΣΤ, so that you may advise whether from the legal point of view it would be justified for the university degree of Mr. Paschalis in Business Administration (B.A., Business Administration), to be considered as a university degree in Commerce.»)

On the 22nd December, 1983, the Director-General of the Ministry forwarded to the respondents another letter which he received from the American University of Beirut, confirming that the degree awarded to the interested party could be considered as a degree in Commerce.

The Office of the Attorney-General, by its letters dated the 10th January, 1984 and 11th January, 1984, advised the respondents that from the material before it, it is deduced that the degree of the interested party could be legally considered as a title in Commerce (Appendices 19 and 20).

At their meeting of the 11th January, 1984, the respondents, after considering the matter, found that «in the light of all the material before them, as well as the advice of the Attorney-General», the degree held by the interested party could be considered as one
5 in Commerce. The respondents then, after stating that they were satisfied that Mr. Paschalis possessed, also, at the material time, the remaining qualifications required by paragraphs (2) and (3) of the schemes of service, proceeded to promote him to the post in question as from the 1st April, 1982.

10 The applicant, feeling aggrieved, filed the present recourse.

Counsel for the applicant argued his case mainly on the grounds that:-

1. The inquiry which was carried out by the respondents was defective.
- 15 2. The applicant is superior in merit to the interested party.

With regard to the first ground, counsel argued that the inquiry carried out by the respondents into the matter of possession by the interested party of the qualifications required by the schemes of service was conducted in a wrongful and defective manner in
20 that:-

- (a) The Director-General of the Ministry interfered with the task of the respondents, which was to inquire and decide for themselves the matter in question, by presenting to the respondents documents and interpreting them in such a way
25 as to mislead them in reaching their decision.
- (b) The respondents, instead of interpreting the schemes of service, as it was their duty to do, referred the matter to the Attorney-General's Office for its advice, which in fact amounts to a substitution of the respondents' discretion by the Attorney-
30 General.
- (c) The interpretation attached by the respondents to the schemes of service in question was not reasonably open to them.
- (d) The respondents failed to conduct an inquiry into the possession by the interested party of qualifications 2, 3 and 6 of the
35 schemes of service.

The power of interpreting and applying a scheme of service is within the absolute discretion of the appointing organ and this Court will not interfere with its decision unless it was not reasonably open to it to reach same. (See *Papapetrou v. The Republic*, 2 R.S.C.C.61; *Mytides v. The Republic*, (1983) 3 C.L.R. 1096 at p. 1111; *Constantinides v. The Republic*, (1984) 3 C.L.R. 643 at p. 652). 5

After the judgment of the Supreme Court the respondents met to reconsider their decision for the selection of one of the candidates for promotion to the post in question and for this purpose they conducted a new inquiry into the matter of whether the interested party possessed the qualifications required by the schemes of service and, especially, into the question of whether his academic degree in Business Administration could be considered as a degree or title in Commerce. In my view, such a course was entirely open to the respondents in the light of the judgment of the Court in *Recourses Nos. 226/82 and 290/82*. In conducting their inquiry the respondents collected material from various sources, reference to which has already been made. 10 15

I now propose to deal with the complaint of the applicant that the respondents reached their decision as regards the academic qualifications of the interested party after interference from the Director-General of the Ministry and the Office of the Attorney-General. 20

It is an undisputed fact that the respondents never requested the Director-General for assistance on this matter and that the American University of Beirut never answered the letter by which the respondents requested advice as to whether the degree of Business Administration awarded to graduates of its said faculty was also considered as a degree in Commerce. 25 30

Although the Director-General was not requested to assist the respondents in their inquiry, it was, in my view, his duty to supply to them the information he had received from the American University of Beirut and this step is not, I believe, contrary to the principles of good and proper administration. However, the Director-General did not stop there but proceeded to convey to the respondents the conclusions reached by the Ministry as regards the degree possessed by the interested party. In view of this I have to decide whether the expression by the Director-General of the con- 35

clusions of the Ministry influenced the discretion of the respondents in taking the sub judice decision.

Although I believe that this course, which was taken by the Director-General is, to say the least, most undesirable, after careful
5 consideration of the material before me, I have come to the conclusion that there is no indication of any interference with the discretion of the Commission, in view of the fact that the latter did not
rely on the conclusions of the Ministry but proceeded to make their
own findings and as far as this submission is concerned, I find that
10 there is no merit in it.

The next submission of the applicant, with which I have to deal, is whether the advice of the Office of the Attorney-General on the question put to it by the respondents amounts to interference with their discretion in taking the sub judice decision.

15 I have earlier made reference to the question put by the respondents and the advice given. In my view, the advice given is not such as to be considered an interference as it neither amounted to a decision nor did it indicate to the respondents what their decision ought to be.

20 In the circumstances before me, I find that the decision of the respondents was their own and that the Office of the Attorney-General neither influenced nor interfered with the taking of the sub judice decision.

I, therefore, dismiss this submission.

25 Part (c) of the arguments of counsel on this ground has already been answered and what remains to be considered is whether a due inquiry has been carried out into the question of possession, by the interested party, of the qualifications required by paragraphs 2, 3 and 6 of the schemes of service.

30 With regard to paragraph 6 of the qualifications, which concerns the possession of a post-graduate diploma, it has already been found by the court in the *Mytides* case, *supra*, that it was open to the Commission to conclude as they did (see p. 1112 of the report) and this Court cannot act as an appellate Court and question the
35 finding of the Judge in that case.

Concerning qualifications 2 and 3, it is stated in the minutes of the meeting of the respondents in which the sub judice decision

was taken (Appendix 21) that the Commission, having re-examined the material before them, were satisfied that Mr. Paschalis possessed, at the material time, those qualifications. Having considered the material before me, which was, also, before the Commission at the material time of taking their decision, I find that it was reasonably open to them, on the basis of such material, to reach that conclusion. This ground of law is, therefore, dismissed. 5

What remains to be considered is whether the applicant should have been preferred to the interested party. It is well settled that for an applicant to succeed on such ground he must prove striking superiority over the interested party. 10

It is correct that the last two reports of the applicant are better than those of the interested party. This fact alone is not, however, enough as to render the applicant strikingly superior to the interested party, having regard to the line of authorities of this Court on the point in issue. I find that the decision of the respondents to prefer the interested party to the applicant was reasonably open to them in the light of the material before them and their conclusions, and this Court cannot substitute its own discretion for that of the respondents. This ground of law, therefore, also fails. 15 20

In the result, this recourse fails and is hereby dismissed with costs.

*Recourse dismissed
with costs.*