

1987 May 9

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NICOS COSTEAS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 139/79).

Public Officers — Appointments/Promotions — First entry and promotion post — Interviews, performance at — One of the factors that may be legitimately taken into account.

Public Officers — Appointments/Promotions — First entry and promotion post — Head of Department — Recommendations of — Need not be specifically invited — Candidates both from his department and from outside — Recommendations, other than those in the confidential reports, may result in contravention of Art. 28 of the Constitution as regards outsiders.

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Constitutional Law — Equality — Constitution, Art. 28 — See Public Officers — Appointments/Promotions — First entry and promotion post, ante.

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By means of this recourse the applicant challenges the appointment of the interested parties Stylianou and Hailou, instead of him, to the post of Assistant Examiner, in the Office of the Official Receiver and Registrar, which is a first entry and promotion post, complaining, inter alia, that the respondent Commission attached undue weight to the results of the interview and that the Commission failed to invite the recommendations of the Official Receiver and Registrar.

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Held, *dismissing the recourse*: (1) The Commission took into consideration all relevant factors, the performance of the candidates at the interview being only one of the factors considered. In any case such performance could legitimately be taken into account.

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(2) The Commission was not bound to invite specifically the recommendations of the Head of the Department especially since as regards

the applicant and interested party Stylianou, they were contained in the form of confidential reports. Moreover any further recommendations from him might have resulted in a contravention of Art 28 of the Constitution as regards interested party Hailou who was serving in a different department and would not be able to have the benefit of similar recommendations from the Official Receiver

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(3) In the circumstances the sub judice appointments were reasonably open to the Commission

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Recourse dismissed
No order as to costs

Cases referred to

Kousoulides v The Republic (1967) 3 C L R 438

Savva v The Republic (1980) 3 C L R 675

Recourse.

15 Recourse against the decision of the respondent to promote the interested parties to the post of Assistant Examiner in the Office of the Official Receiver and Registrar in preference and instead of the applicant

E Lemonans, for the applicant

20 *G Constantinou — Erotocntou (Mrs)*, Senior Counsel of the Republic, for the respondent

Cur adv vult

25 *MALACHTOS J* read the following judgment: By the present recourse the applicant seeks a declaration of the Court that the respondents' decision to appoint the interested parties Demetrios Hailou and Costas Stylianou to the post of Assistant Examiner, in the Office of the Official Receiver and Registrar, in preference and instead of the applicant, is null and void and of no legal effect whatsoever

30 The relevant vacancies to the post in question which was a first entry and promotion post, were advertised in the official Gazette of the Republic on the 18 8 78 and in response thereof 33 applications were submitted

35 At its meeting of 16 12 78 the respondent Commission decided that 12 candidates, including the applicant and the interested parties, be invited for interview on 18 1 79. On that date the respondent Commission, as well as the Official Receiver and Registrar, put several questions to all the candidates on matters of technical knowledge and on matters connected with the duties of

the post as shown in the relevant scheme of service.

The respondent Commission considered the merits, qualifications and experience of the candidates interviewed as well as their performance during the interview (personality, alertness of mind, general intelligence and the correctness of answers to questions put to them) the personal files and confidential reports of the candidates already in the service and concluded that the interested parties were on the whole the best and the most suitable for the post and it appointed them to the permanent post of Assistant Examiner with effect as from 15.3.79.

As a result, the applicant filed the present recourse.

It has been argued on behalf of the applicant that the respondents were unduly influenced by the results of the interview and that they failed to give proper weight to the other legal considerations and also failed to invite the recommendations of the Official Receiver and Registrar. It was also argued that the respondent Commission failed in its primary duty to select the most suitable candidate in that the applicant being already in the Department concerned, was more suitable than the interested parties who were outsiders.

From a perusal of the relevant minutes it is evident that the respondent Commission took into consideration all relevant factors, the performance of the candidates being only one of those factors so considered which, in any case, may legitimately be taken into account. I also consider that as regards the recommendations of the Official Receiver and Registrar, I cannot hold that the Commission acted improperly, as I do not think that such recommendations have to be invited specifically, especially since as regards the applicant and interested party Stylianou, they were contained in the form of confidential reports: See *Kousoulides v. The Republic* (1967) 3 C.L.R. 438 at pp. 446-7. Moreover, any further recommendations from him for this purpose might have resulted in a contravention of Article 28 as interested party Hailou being in a different department would not be able to have the benefit of similar recommendations from the Official Receiver. (See *Savva v. The Republic* (1980) 3 C.L.R. 675 at 697).

Finally, proceeding to comparison of the parties, as regards merit, the interested parties appear to be better than the applicant. They were rated as excellent and/or very good, whereas the applicant was rated as very good and good.

The qualifications of the applicant and interested parties are more or less the same. As regards seniority, interested party Hailos who worked as Storekeeper, 2nd Grade, in the Department of Stores, is senior (see s. 46(3) of the Public Service Law 1967, Law 5 33 of 1967), and interested party Stylianou, who held the same posts as the applicant, that of Clerical Assistant in the Department of Official Receiver and Registrar, has the same seniority as the applicant.

10 I find, therefore, that in the circumstances it was reasonably open to the respondent Commission in its effort to appoint the most suitable candidate for the post, to select the interested parties instead of the applicant, who has failed to establish any striking superiority in order that this Court may be justified to disturb the sub judge decision complained of.

15 For the above reasons, this recourse fails and is hereby dismissed, with no order as to costs.

*Recourse dismissed.
No order as to costs.*