

1987 May 15

[LORIS. J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS SEKKIDES,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

*(Case No 862/85).*

*Public Officers — Promotions — Merit — Reflected in the confidential reports — Recommendations by Head of Department — An additional merit*

*Public Officers — Promotions — Qualifications — Academic qualifications — Additional to those required by the scheme of service, but not envisaged therein as an advantage — Do not by themselves indicate striking superiority*

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*Public Officers — Promotions — Seniority — The Public Service Law 33/67, section 46(7)*

*Public Officers — Promotions — Judicial control — Principles applicable*

*Reasoning of an administrative act — May be supplemented by the material in the file of the administration*

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By means of this recourse the applicant impugns the decision to promote the interested party to the post of Senior Fisheries Assistant on the following grounds, namely that the applicant was strikingly superior to the interested party and that the sub-judice decision was not duly reasoned

The interested party had better confidential reports than the applicant and, moreover, he was, also, recommended for promotion by the Head of the Department. The applicant possesses an additional academic qualification, which, however, is not envisaged as an advantage in the relevant scheme of service. The Applicant and the interested party were first appointed to the same post in the service and subsequently promoted on the same dates. The applicant was born on 12 1946, whilst the interested party was born on 3 1945

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Held, dismissing the recourse (1) The merits of the candidates are reflected

in the confidential reports, whilst the recommendations of the Head of the Department is an additional merit, which cannot be lightly disregarded by the administration. (*Karagiorgis v C B C (1985) 3 C L R 379 at p 388 adopted*)

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(2) Possession of academic qualifications additional to those required by the scheme of service, but not specified therein as an advantage, do not indicate by themselves a striking seniority

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(3) In the light of the facts of this case, the seniority of the parties is regulated by their age (Section 46(7) of Law 33/67) and therefore the interested party is senior to the applicant. In any event seniority can have decisive effect only where merits and qualifications are evenly balanced

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(4) An administrative Court cannot interfere in order to set aside a decision of promotion, unless it is satisfied that the applicant was an eligible candidate, who was strikingly superior to the one selected. In the light of the above the conclusion is that the applicant in this case failed to make out a case of striking seniority

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(5) The sub judice decision clearly conveys the reasoning of the selection of the interested party. Furthermore, the material in the files may supplement the reasoning. In this case the files contained the required material to support the sub judice decision

*Recourse dismissed*

*No order as to costs*

*Cases referred to*

*HadjiIoannou v The Republic (1983) 3 C.L R 1041,*

*Karagiorgis v C B C (1985) 3 C L R 379,*

*Nissiotis v The Republic (1977) 3 C L R 388,*

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*Korai and Another v C B C (1973) 3 C L R 546,*

*Georghakis v The Republic (1977) 3 C L R 1,*

*HjiGeorghiou v The Republic (1977) 3 C L R 35,*

*Cleanthous v The Republic (1978) 3 C L R 320,*

*Theodossiou v The Republic, 2 R S S C 44,*

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*Papadopoulos v P S C (1985) 3 C L R 405,*

*Pastellides v Republic (1969) 3 C L R 36,*

*Menelaou v The Republic (1969) 3 C L R 36,*

*Theocharous v The Republic (1969) 3 C L R 318*

**Recourse.**

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Recourse against the decision of the respondent to promote the

interested party to the post of Senior Fisheries Assistant in the Department of Fisheries in preference and instead of the applicant.

*M. Christofides*, for the applicant.

*D. Papadopoulou (Mrs.)*, for the respondent.

*Cur. adv. vult.*

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LORIS J. read the following judgment. The applicant impugns, by means of the present recourse, the decision of the respondent P.S.C. published in the Official Gazette of the Republic on 20.9.1985 (CG. No. 2077), whereby the interested party namely Savvas Michael Kanios, was promoted to the permanent (Dev) post of Senior Fisheries Assistant in the Department of Fisheries (Ministry of Agriculture and Natural Resources) in preference to and instead of the applicant.

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The grounds of law relied upon by the applicant, as set out in the recourse under 4 heads, may be thus summarised:

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1. The respondents ignored, abusing thereby their powers in law, applicant's striking superiority in all respects over the interested party.

2. The sub-judice decision is not duly reasoned.

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3. The confidential reports were prepared in contravention of the law having been compiled allegedly by persons either having no authority or being biased against the applicant.

4. In view of the allegations in para. 3 above, any report of a Departmental Board or any other submission or decision based on the reports aforesaid and eventually the decision of the respondent is null and devoid of any legal effect.

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Whilst here it must be noted that complaints under 3 and 4 above were neither explained nor pursued any further. In paragraph 1(γ) of the written address of the applicant the following are stated verbatim in this connection.

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«(γ) with reference to legal points under 3 and 4, the applicant reserves his right to adduce evidence.»

In spite of the above statement in his written address, when this recourse was fixed for «clarification and evidence» learned counsel appearing for him stated that the applicant did not intend to adduce any evidence and confined himself in clarifying matters connected with legal points under 1 and 2 of the recourse.

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In the circumstances complaints under 3 and 4 are considered as abandoned and they are accordingly dismissed.

5 Before proceeding to examine the remaining two complaints under 1 and 2 above I feel that I should repeat here what has been repeatedly emphasized and recently reiterated by the Full Bench of this Court in *Hadjioannou v. The Republic* (1983) 3 C.L.R. 1041 at p. 1045:

10 «An administrative Court cannot intervene in order to set aside the decision .... unless it is satisfied, by an applicant in a recourse before it, that he was an eligible candidate who was strikingly superior to the one who was selected, because only in such a case the organ which has made the selection for the purpose of an appointment or promotion is deemed to have exceeded the outer limits of its discretion and, therefore, to  
15 have acted in excess or abuse of powers.....»

Let us examine then, whether the applicant has discharged the heavy burden of establishing «striking superiority» over the interested party.

*Merit:*

20 I had the opportunity recently to sum up the position in respect of «the merits of a candidate» in the case of *Karagiorghis v. C.B.C.*, (1985) 3 C.L.R. 379 at p. 388 as follows:

25 «The merits of a candidate are reflected in the confidential reports whilst the recommendations by the Head of Department is an additional merit which cannot be lightly disregarded by an administrative body dealing with promotions.»

30 In the instant case it is apparent from the confidential reports that the interested party is better rated than the applicant. Thus is the confidential reports of the last 3 years (1982, 1983, 1984) the interested party has 6 excellent and 6 very good (6-6-0) for each one of the 3 years aforesaid whilst for the same period the applicant is rated with 5-7-0 (1982) 4-8-0 (1983) and 5-7-0 (1984). Furthermore the interested party has the most favourable  
35 comments in his confidential reports for the aforesaid periods, whilst applicant has none.

To the above picture of the merit as it transpires from the

confidential reports we must add the express recommendation of the Head of Department in favour of the interested party

And «obviously the recommendations of the Director of the Department have made the overall picture of the interested party more favourable than that of the applicant» (*Nissiotis v The Republic* (1977) 3 C L R 388 at p 397) 5

#### *Qualifications*

In this connection there is no suggestion that the interested party lacked the qualifications envisaged by the scheme of service, set out in appendix «Γ» attached to the written address of the respondent, nor is there any suggestion that the scheme of service stipulated additional academic qualifications as an advantage. In fact no mention of additional qualifications whatever is made in the scheme of service aforesaid 10

Upon careful examination of the qualifications of the applicant and the interested party, as they appear in the relevant appendices attached to the opposition and the written address of the respondent, it may be rightly remarked that the applicant has inter alia a «diploma in Fisheries» obtained from the Grimsby College of Technology in England after having successfully completed one year's full time course of study in the Department of Maritime Studies and Fisheries (South Humberside - England) which may be considered as an additional Academic qualification, none the less such an additional qualification is not envisaged in the said scheme of service as an advantage 15 20 25

In the case of *Hjiloannou v The Republic* (Supra) it was held by the Full Bench of this Court (pp 1046-1047) that «Possession of academic qualifications additional to those required by the scheme of service, which are not specified in the scheme of service as an advantage, should not weigh greatly in the mind of the Commission who should decide in selecting the best candidate on the totality of the circumstances before them 30

Additional academic qualifications to those provided by the scheme of service do not indicate by themselves a striking superiority (See *Elli Chr Korai and another v The C B C* (1973) 3 C L R 546, *Andreas D Georghakis v The Republic* (1977) 3 C L R 1, *HjiGeorghiou v The Republic* (1977) 3 C L R 35, *Cleanthous v The Republic* (1978) 3 C L R 320) 35

It is apparent from the perusal of the sub-judice decision that the respondent P.S.C directed its mind to the above principles in reaching at same

*Seniority*

- 5 According to the provisions of s 46(2) of the Public Service Law 1967 (Law 33/67) «in the case of simultaneous appointment or promotion (or secondment - vide s 5 of Law 10/83) to the particular office or grade of the same office, seniority shall be determined according to the officer's previous seniority»
- 10 Further according to the interpretation section (sub-section 7 of s. 46 of Law 33/67 «previous seniority» means «seniority of the officers concerned in the grade or office held by them immediately before they entered their present grade or office, and if such seniority is the same, previous seniority shall be determined by the
- 15 same process back to the first appointments of the officers in the public service. In case seniority in the first appointment is the same the previous seniority shall be determined by the age of the officers.»
- 20 Applicant as well as the interested party were first appointed and subsequently promoted on the same dates (a) 1st appointment of both as Fisheries Assistant 2nd Grade (T) on 1.11.68, (b) Promotion of both to Fisheries Assist. 2nd Grade (P) on 1 6.79 (c) Promotion of both to Fisheries Assistant 1st Grade (P) on 15.3.82.
- 25 Therefore according to the provisions of s. 46(7) of Law 33/67 their seniority is regulated by their age; applicant was born on 1.12.1946 whilst the interested party was born on 3 9 45; therefore the interested party has a seniority of 15 months over the applicant
- 30 Concluding in connection with complaint under 1 above, it must be stated that the interested party presents a better picture as regards merit than the applicant.

- 35 The difference in merit, however slight in favour of the interested party, is being enhanced by the recommendations in his favour by the Head of the Department, recommendations which should be given due regard by the P.S.C. as envisaged by s. 44(3) of Law 33/67 and which constitute a most vital consideration which cannot be disregarded (*Theodossiou v. The Republic*, 2 R.S.C.C. 44).

As regards qualifications the «diploma in Fisheries» possessed by the applicant may be considered as an additional Academic qualification; nevertheless such an additional qualification is not envisaged by the scheme of service under consideration as an advantage, and cannot by itself, constitute striking superiority over the interested party (vide *Hjiloannou v. Republic* - supra - and also the majority decision of the Full Bench in *Andrestinos Papadopoulos v. P.S.C.* (1985) 3 C.L.R. 405). 5

In connection with seniority the interested party has for the reasons explained above 15 months seniority over the applicant; needless to add that the seniority can have a decisive effect only where the merits and qualifications of the parties are evenly balanced (*Partellides v. The Republic* (1969) 3 C.L.R. 480), whilst in the present case the interested party is better merited, as above stated and in cases of promotion merit should carry the most weight (*Menelaou v. The Republic* (1969) 3 C.L.R. 36 at p. 44 - *Theocharous v. The Republic* (1969) 3 C.L.R. 318 at p. 322). 10 15

In the light of the foregoing, I am satisfied that the respondent P.S.C. carried out due inquiry, taking into consideration all relevant criteria and properly applying the law in reaching at the sub-judice decision which was reasonably open to it. 20

For the reasons already stated in the present judgment the applicant failed to prove striking superiority over the interested party; therefore complaint under 1 above is doomed to failure.

Turning now to complaint under 2 above; the complaint that the sub-judice decision was not duly reasoned: Suffice it to say that having examined the sub-judice decision I am satisfied that it clearly conveys the reasoning why the interested party was preferred for the promotion in question instead of the applicant; furthermore the material contained in the files may legitimately supplement the reasoning behind a decision; and as a matter of fact the files before me which were also before the respondent P.S.C. contained more than the required material which can support the sub-judice decision allowing at the same time an unhindered judicial scrutiny. 25 30 35

In the result the present recourse fails and is accordingly dismissed; in the circumstances there will be no order as to costs.

*Recourse dismissed.  
No order as to costs.*