

1988 January 28

[TRIANTAFYLLOIDES, P., SAVVIDES, LORIS, STYLIANIDES, KOURRIS, JJ.]

1. CONSTANTINOS SAVVA,
2. GEORHIOS A. GEORGHIOU,

Appellants,

v.

THE PUBLIC SERVICE COMMISSION,

Respondent.

(Revisional Jurisdiction Appeals Nos. 480 and 484).

Collective organs—Composition—Failure by member, who participated in first meeting, to attend further meetings on the same subject—Principles applicable.

Collective organs—Composition—Change of—Meetings on preliminary issues before change—Minutes placed before the organ with its new composition—Conclusion that all new members adopted previous decisions—Whole process regarded as having commenced ab initio. 5

Public Officers—Promotions—The Public Service Law 33167, section 28—Does not prevent promotion to a post carrying a higher than the immediately higher scale to that carried by the post held before promotion. 10

Public Officers—Promotions—Scheme of service—Service in a post for a minimum period of time—Post graduate qualifications not constituting a necessary qualification for the post—Can be regarded as service of upto two years—Decision of Council of Ministers No. 12655 as amended.

Public Officers—Promotions—Whether distinction should be made between 15

holding a post on a permanent basis and holding a post on a temporary basis—Question determined in the negative—The Public Service Law 33/67, section 2 "post", "public post" and "public service".

5 *Words and phrases: "Post", "Public post" and "Public Service" in section 2 of the Public Service Law 33/67.*

The present appeals are directed against the judgment of a judge of this Court by which he dismissed the recourses of the appellants challenging the promotion of a number of candidates to the post of Animal Husbandry Officer A in the Department of Agriculture.

10 The Public Service Commission had a number of meetings on preliminary issues. Its composition was then changed. The minutes of the previous meetings were placed before the Commission at its relevant meeting after the new composition. The meeting took place on 28.7.82. Thereafter, its composition remained unchanged, but one of its members did not participate in further meetings.

The appellants submitted that:

(a) The aforesaid facts ought to have led to annulment of the decision,

20 (b) The interested parties did not hold the immediately lower post contrary to section 28 of the Public Service Law as their salary was in Scale A8, whereas the post of Animal Husbandry Officer A was in Salary Scale A11 and they ought, therefore, to have passed from Salary Scales A9-A10 before reaching Salary Scale A11.

25 (c) The finding that interested party Takis Antoniou satisfied the scheme of service and, in particular, the requirement concerning" five years continuous service at the post of Animal Husbandry Officer/Assistant Husbandry Officer", was wrong.

(d) The conclusion that there is no distinction between holding of a post on a permanent and holding a post on a temporary basis is wrong.

30 Held, *dismissing the appeal*: (1) On the question whether a collective organ can validly take a decision in case when, without a change in its composition, a member, who was present at its first meeting concerning the subject, fails to attend subsequent meetings, this Court adopts the principles expounded in *Vivardi v. Vine Products Council* (1969) 3 C.L.R. 486 and *Panayiotou and Others v. Republic* (1972) 3 C.L.R. 337.

(2) The trial Judge rightly came to the conclusion that in the circumstances of the recourses under consideration the deliberations actually commenced on the 28th July, 1982 and the meetings prior to the 28th July, 1982, dealt with preliminary issues only and that the composition of the respondent Commission has remained unchanged as from the 28th July, 1982, till the date when the sub judge decision was taken. 5

(3) Though an increase of salary may constitute a promotion, nevertheless the remuneration received by a candidate does not constitute a consideration for promotion. Also, though promotion should be to the immediately higher post when the promotion "carries with it the emplacement of the officer in a higher division of the public service", yet the expression appearing in section 28 of Law 33 of 1967" on a salary scale with a higher maximum" when it refers to a promotion carrying an increase of the officer's remuneration does not mean to the immediately higher salary scale. 10 15

(4) In virtue of decision 12655 of the Council of Ministers, as amended, post-graduate qualification, not constituting a necessary qualification for the post, can be considered as service or experience of upto two yeras.

(5) Under section 2 of the Law "post" is defined as meaning a public post and "a public post" is defined as a post in the public service. "Public service" is defined as follows: "public service' means any service under the Republic other than". 20

Appeal dismissed.
No order as to costs.

Cases referred to: 25

Vivardi v. Vine Products Council (1969) 3 C.L.R. 486;

Panayiotou and Others v. Republic (1972) 3 C.L.R. 337;

Papaleontiou v. Republic (1987) 3 C.L.R. 211;

Georghiades v. Republic (1966) 3 C.L.R. 827.

Appeals. 30

Appeals against the judgment of a Judge of the Supreme Court of Cyprus (A. Loizou, J.) given on the 6th April 1985 (Revisional Jurisdiction Cases Nos. 154/83 and 164/83)* whereby ap-

* Reported in (1985) 3 C.L.R. 694.

pellant's recourses against the promotion of the interested parties to the post of Animal Husbandry Officer A in the Department of Agriculture were dismissed.

5 A. S. Angelides, with M. Savva (Mrs.) for appellant in R.A. 480.

A.S. Angelides, for appellant in R.A. 484.

E. Papadopoulou (Mrs), for respondent.

Cur. adv vult.

10 TRIANAFYLLIDES, P.: The judgment of the Court will be delivered by Mr. Justice Savvides.

15 SAVVIDES, J.: The present appeals are directed against the judgment of a judge of this Court in the exercise of the original jurisdiction of the Court by which he dismissed the recourses of the appellants challenging the promotion of a number of candidates to the post of Animal Husbandry Officer A in the Department of Agriculture.

20 A number of legal grounds were raised in the present appeals, some of which were abandoned in the course of the hearing challenging the conclusions of the learned trial judge on the legal grounds raised before him at the hearing of the recourses.

Counsel for the appellants submitted that the conclusion of the learned trial judge on the question of the change in the composition of the Respondent Commission during the process of the promotions was wrong.

25 The learned trial judge in dealing with this matter, which was one of the grounds of law raised before him, concluded as follows (see *Savva and Another v. The Republic* (1985) 3 C.L.R.

694): -

"As it appears from the minutes of the meetings of the respondent Commission its composition did in fact change at the meeting of the 28th July 1982, and thereafter, by the participation of the two new members. Before this meeting of the 28th July, 1982, all the meetings dealt with the preliminary issues in order to prepare the material required for the consideration of the promotions as above set out. It is also clear from the minutes of this first meeting of the respondent Commission under its new composition (appendix 6), that the minutes of all the preliminary meetings were before the respondent Commission and its new members and therefore I cannot accept that these new members were not fully informed of what transpired before. Also since nothing appears from the minute before me that they were not in agreement, I can reach no other conclusion than that they adopted all previous decisions of the respondent Commission concerning the matter and in that the whole process could be regarded as taken fully ab initio.

Furthermore the composition of the respondent Commission has remained unchanged after the meeting of the 28th July, 1982, as the Chairman and the same three members, Messrs. Papaxenophontos, Hadjiprodrumou and Cristodoulides were present at all subsequent meetings, which were the material ones.

The said meetings were also in accordance to section 11 of Law 33 of 1967, which provides that the Chairman and two other members present at any meeting shall form a quorum."

We find ourselves unable to accept the submission of counsel for the appellants that the trial Court erred in its finding. The question as to whether a collective organ, such as the respondent in the present appeals could validly take a decision though its composition was not the same all along, as one of its members who was present at the first meeting was absent from its subsequent meetings, has been considered by members of this Court

in a number of cases. Thus, *in Vivardi v. Vine Products Council* (1969) 3 C.L.R. 486, a recourse based on such ground was dismissed. In reaching his conclusion Triantafyllides, J. as he then was, had this to say at pp. 490-491: -

5 "I can quite well see why in a case where there has supervened a change in the composition of a collective organ, through the presence, at a later stage, of a previously absent member, it is necessary for the whole process to be repeated all over again, so that all members, in reaching a decision,
10 should be cognizant of all relevant factors; and, also, where a member of a collective organ has not been able to take part in all the relevant to a matter meetings he should not be allowed to participate when the decision is being reached on such matter.

15 But in a case, such as the present one, in which a member drops out after the first meeting, I can see no useful purpose being served by expecting the remaining members, before reaching a decision, to start ab initio, at their second meeting, the whole process which had commenced at the first meeting,
20 at which all of them were all along present.

 I have been reinforced in this view by the decision of the Greek Council of State in *Case 777(58)*; it is clear from the reasoning of the Council in its said decision that the non-participation of certain members, of the collective organ concerned, in the final vote regarding an appointment - (because
25 they had not been present at all material stages of the matter) - would not have prevented the appointment from being validly made by the remaining members, had there been secured, as from among the remaining members who were entitled to vote, the necessary for the occasion majority vote."
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The relevant principles of Administrative Law are expounded in the above case as follows (pp. 489, 490): -

"The relevant principles of Administrative Law are stated in

the Conclusions from the Jurisprudence of the Greek Council of State (1929-1959) at p. 112; they are to the effect that the process, before any collective organ, regarding discussing about, and deciding on, any matter, has to take place from beginning to end while there are present the same members of such an organ, in order to ensure the knowledge and evaluation by each member of all factors which came to light during such process. If this process extends to more than one meeting, then the composition of the collective organ must remain unchanged at all its relevant meetings. If there is any change in the composition of the collective organ, at any meeting, through the presence of a member who did not take part at a past meeting on the matter, the organ cannot take a valid decision at its last relevant meeting, except if at such meeting the whole process is repeated fully ab initio, so that the consideration of the matter can be regarded as having commenced and been concluded at such last meeting.

In this respect it is useful to refer, also, to cases 1753(56), 103(57) and 1128(58), decided by the Greek Council of State, in which, in each case, a decision of a collective organ was annulled because of alteration, during the material time, of the composition of the organ, through the absence at a subsequent meeting on the same matter of a member who had been present at the previous meeting and the presence in his place, at the next meeting, of a member who had been absent at the previous meeting."

The above exposition of the principles was adopted and followed by A. Loizou, in *Panayiotou and Others v. The Republic* (1972) 3 C.L.R. 337 at pp.339 - 340.

The sub judice decision in that case was annulled on the ground that the deliberations had commenced and were extended to two meetings of the respondent Commission and at the second meeting there was a change in the composition of the organ by the participation of a member who did not take part in the previous meeting.

The learned trial judge, therefore, rightly came to the conclusion that in the circumstances of the recourses under consideration the deliberations actually commenced on the 28th July, 1982 and the meetings prior to the 28th July, 1982, dealt with preliminary issues only and that the composition of the respondent Commission has remained unchanged as from the 28th July, 1982, till the date when the sub judice decision was taken.

It has been argued by counsel for the appellants that interested parties Takis Antoniou and Antonis Constantinou were wrongly promoted, in that they did not hold the immediately lower post contrary to section 28 of the Public Service Law as their salary was in Scale A8, whereas the post of Animal Husbandry Officer A was in Salary Scales A11 and they ought, therefore, to have passed from salary scales A9-A10 before reaching Salary Scale A11.

The learned trial judge in dealing with these matters found as follows at pp. 703, 704:-

"Both arguments must fail. Though an increase of salary may constitute a promotion, nevertheless the remuneration received by a candidate does not constitute a consideration for promotion. Also, though promotion should be to the immediately higher post when the promotion 'carries with it the em-
placement of the officer in a higher division of the public service, yet the expression appearing in section 28 of Law 33 of 1967 on a salary scale with a higher maximum' when it refers to a promotion carrying an increase of the officer's remuneration does not mean to the immediately higher salary scale."

We agree with the above findings of the trial Court.

It was also contended that the finding of the trial Court that interested party Takis Antoniou satisfied the scheme of service and, in particular, the requirement concerning " five years continuous service at the post of Animal Husbandry Officer/ Assistant Husbandry Officer", was wrong.

The learned trial judge found as follows at pp. 704, 705: -

"However, in accordance with Decision No. 12655 of the Council of Ministers, as amended by its decision of the 10th, 11th and 12th February 1982, post-graduate titles, not constituting a necessary qualification for a post, can be considered as service or experience of up to two years. And as there is nothing in the relevant schemes of service that actual service is required, it would be quite in order for this officer to be credited with up to two years service in respect of his degree since it does not constitute a necessary qualification.

(See on this the case of *Economides v. The Republic* (1973) 3 C.L.R. 410 at pp. 412-413.)"

This matter has been recently considered by the Full Bench in *Papaleontiou v. The Republic* (1987) 3 C.L.R. 211 at p. 220 in which it was held that "... 'service' and 'satisfactory service' in the scheme of service, could not be limited to actual service and exclude a person who is on scholarship abroad to enhance his knowledge in order to render better services to the education of the country".

We are therefore in agreement with the findings of the learned trial judge in this respect which appear at pp. 704, 705 of his judgment (vide, *Savva and Another v. The Republic* (supra)). In the result this ground also fails.

We also agree with the conclusions reached by the learned trial judge that under section 2 of the Public Service Law, no distinction is made between holding a post on a temporary or permanent basis.

Under section 2 of the Law "post" is defined as meaning a public post and "a public post" is defined as a post in the public service. "Public service" is defined as follows:

" public service, means service under the Republic other

than the judicial service of the Republic or service in the Armed or Security Forces of the Republic or service in the Office of the Attorney-General of the Republic or the Auditor-General or the Accountant-General or their Deputies or service
5 in any office in respect of which other provision is made by law or service by persons whose remuneration is calculated on a daily basis."

Useful reference may be made in this respect to the case of *Menelaos Georghiades v. The Republic* (1966) 3 C.L.R. 827 at
10 pp. 846, 847.

Therefore, the grounds of appeal based on the above finding of the trial Court fail.

Having considered all the arguments advanced by counsel for the appellants, we have not been satisfied that the learned trial
15 judge erred in dismissing the appellants' recourses.

In the result both these appeals fail and are hereby dismissed with no order for costs.

Appeals dismissed with no order for costs.