

(1988)

1988 May 27

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PIERIS S. PAPATHOMAS,

*Applicant.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Case No. 46/87).

*Public Officers—Appointments/Promotions —First entry and promotion post—Qualifications—The applicant was qualified for the post, because he had the required academic qualification, and the interested party, because he had the required under a note to the scheme experience—Applicant cannot be considered as having an additional qualification—Therefore, there was no need for special reasoning why he was not selected.* 5

*Public Officers—Appointments/Promotions—Qualifications—Knowledge of a subject—It may be established not only by the production of a certificate, but, also, by any other material.*

*Public Officers—Appointments/Promotions—Confidential reports—Transfer of an officer during September, 1983 from the District Court of Paphos to the Supreme Court—Confidential report for 1983 made by Chief Registrar without consultation with the previous reporting officer—Chief Registrar was previously the countersigning officer and knew such officer's performance—Contention that the report is invalid—Held unfounded.* 10  
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*Public Officers—Appointments/Promotions —Department's recommendation preceding interview—Burden of satisfying Court that the Commission was, thus, influenced or prejudiced against applicant—Lies on applicant's shoulders.*

*Public Officers—Appointments/Promotions—Weighing of the relevant factors—Commission may attribute more significance to the one than to another, provided it exercises correctly its discretion.*

5 This recourse, whereby the applicant impugned the promotion of the interested party to the post of Chief Registrar, was dismissed by the Court. The principles expounded by the Court, in dismissing the recourse, are sufficiently indicated in the hereinabove headnote.

*Recourse dismissed.  
No order as to costs.*

10 *Cases referred to:*

*Georgioui v. The Republic* (1976) 3 C.L.R. 74.

### **Recourse.**

15 Recourse against the decision of the respondent to promote the interested party to the post of Chief Registrar in the Judicial Department in preference and instead of the applicant.

Applicant appeared in person.

*P. Clerides*, for the respondent.

*Cur. adv. vult.*

20 SAVVIDES J. read the judgment. The applicant prays for a declaration of the Court that the decision of the respondent, published in the official Gazette of the Republic dated 14th November, 1986, whereby Mr. Michael Savva, the interested party, was promoted to the post of Chief Registrar, instead of and in preference to him, should be declared null and void.

25 The facts of the case are briefly as follows:

Due to the retirement of the then holder of the post of Chief Registrar in the Judicial Department which is a First Entry and Promotion post, the vacancy was published in the official Gazette

of the Republic dated 14th August, 1986. Five applications were submitted in response, amongst which those of the applicant and the interested party. The respondent, at its meeting of the 25th September, 1986, considered the applications and decided to interview the candidates in the presence of a representative of the Supreme Court. The Supreme Court, by letter dated 10th October, 1986, informed the respondent that it did not consider it necessary to represent itself at the interviews since all candidates were known to it from their work in the Judicial Department and recommended the interested party as the most suitable.

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At its meeting of 16th October, 1986 the respondent interviewed four of the candidates (the fifth one withdrew his application) and after assessing their performance proceeded to their general evaluation and comparison. (See minutes, appendix 4 to the opposition). The respondent, after taking into consideration the confidential reports of the candidates, their performance at the interview, their qualifications, seniority and the recommendations of the Supreme Court, found the interested party as the most suitable and promoted him to the post of Chief Registrar in the Judicial Department, as from 1st November 1986.

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The promotion of the interested party which was published in the official Gazette of the Republic dated 14th November, 1986, is challenged by the present recourse.

The first point raised by the applicant is that he possesses, additional qualification which should have been considered by the respondent as amounting to an advantage and special reasons should have been given for disregarding them.

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The scheme of service provides with regard to qualifications under paragraph (1) (a) that: (a) University Diploma or title or an equivalent qualification and at least ten years performance of duties of a legal nature, at least seven of which in practice as an advocate is required and (b) a university Diploma etc. and ten years experience in Court Registry work.

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5 The same scheme also provides, under note (1) that Senior Registrars and Registrars A' not possessing the above qualifications could be taken into consideration for the filling of the post, provided they have 15 years of experience in Court Registry work and they hold, on the date of the approval of the scheme of service, at least the post of Assistant Registrar.

10 The applicant possesses a Diploma in Law for Executive Leadership of the La Salle Extension University, U.S.A. and holds the post of Registrar A' since 15th October, 1983. The interested party is a graduate of the English School, Nicosia and was holding, at the material time the post of Senior Registrar to which he was promoted on 15th July, 1984. His experience in Court Registry work starts almost since his appointment in the Public Service.

15 It is obvious from the above that both parties satisfied the requirements of the scheme of service as to academic qualifications, I cannot accept the applicant's view that his legal qualification amounts to an additional qualification in accordance with the scheme of service, once such matter does not appear in the scheme itself and as a result I find that the need for special reasoning does not arise in the present case.

20 The applicant also contended that the interested party did not possess one of the qualifications required by the scheme of service, namely, knowledge of the Financial Regulations and the Government accounting system (paragraph 4 of the scheme of service).

30 The respondent stated in its minutes that it has found that all candidates possess the qualifications of the scheme of service. Paragraph 4 does not require any certificate or the passing of any examinations either in Financial Regulations or the accounting system but simply requires knowledge of it. Such knowledge may be established not only by the production of a certificate to this effect, but also by any other material. It is obvious from the contents of the files which were before the respondent (particular-

ly exhibit 1) that the interested party was in charge of the accounts in the District Court of Nicosia, at least between the years 1961 and 1963 and it was reasonably open to the respondent to find in the circumstances that the interested party possessed this qualification. This ground is, therefore, dismissed.

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The next complaint of the applicant is that although the applicant was transferred from the District Court of Paphos to the Supreme Court in Nicosia in September, 1983, his confidential report for that year was prepared and signed by the Chief Registrar who, in contravention of the contents of paragraph 5 of the regulations concerning confidential reports did not seek the views of his former reporting officer, or, at least he does not state such matter in the report.

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I find this contention of applicant untenable. One of the functions of the Chief Registrar is to supervise the staff of all the courts throughout the Republic and as such he was in a position to know the performance of the applicant. Moreover, the Chief Registrar was all along the countersigning officer of the applicant and as such it is presumed that he knew his performance at work. This contention is, therefore, also dismissed.

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Another complaint of the applicant that the respondent first misled the Supreme Court by finding that all candidates possessed the required qualifications and then took into consideration the recommendations of the Supreme Court, and was influenced by them in taking the sub judice decision, since the said recommendations preceded the interviews.

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As I found earlier it was reasonably open to the respondent to find that the interested party possessed the qualifications required by the scheme of service. As to the recommendation by the Supreme Court of the interested party it is clearly stated by the respondent in its minutes of 16th October, 1986, that such recommendation was in no way to be considered as binding on it. Having perused the minutes of the meetings of the respondent I find that there is nothing to show that the respondent was in any

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way influenced or prejudiced against the applicant by the fact that the recommendations of the Supreme Court (the Department concerned) preceded the interviews, and the burden is upon the applicant to prove such allegation. I will, therefore, dismiss this ground also.

I now come to consider the merits of the case. It has been established by a series of cases that an applicant, in order to succeed in a recourse against an appointment or promotion must establish striking superiority over the interested party and mere superiority is not enough. In considering appointments or promotions the appointing organ must weigh all factors pertaining to the candidates together and chose the best candidate. In doing so the respondent may attribute more significance to one factor than another, as it may deem proper having regard to the circumstances of the case, provided, always, that it exercises its discretionary powers correctly (See *Georghiou v. The Republic* (1976) 3 C.L.R. 74, at p. 82).

The two parties were more or less equal in merit as the picture is reflected through their confidential reports. In addition the performance of the interested party during the interviews was better as found by the respondent. The interested party was also senior to the applicant. Having regard to the circumstances, the fact that the applicant possessed more academic qualifications than the interested party cannot establish by itself striking superiority on his part. I, therefore, find that the sub judge decision was reasonably open to the respondent.

In the result this recourse fails and is hereby dismissed.

In the circumstances I make no order for costs.

*Recourse dismissed.*

*No order as to costs.*